Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States

Lazhar Abbes

Pro se Petitioner,

VS.

EMBRAER ENGINEERING SERVICES, INC.

D/b/a EMBRAER SERVICES INC.

Respondent.

On Petition For Writ Of Certiorari

To The United States Court Of Appeals

Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Lazhar Abbes

6737 Houlton Cir.

Lake Worth, FL. 33467

Tel: (561) 304-3006

QUESTION(s) PRESENTED

(i) Did the United States District Court, Southern District of Florida and the United States Court of Appeals, Eleventh Circuit Erroneously find that Embraer Engineering Services, Inc's ("EESI") allegations regarding Mr. Abbes's poor quality of work and performance are reasons for "EESI'S" managers Admission and believe in the validity of their criticisms of him constitute a non discriminatory action against him?

(ii) Did the United States District Court, Southern District of Florida and the United States Court of Appeals for the Eleventh Circuit correctly find that transferring Mr. Abbes to an other Engineering discipline against his will, terminated his employment without valid reasons and replaced him with other employees does not constitute a discriminatory action against him? Plaintiff Lazhar Abbes was discriminated against and unlawfully terminated his employment by Defendant Embraer Engineering Services, Inc. ("EESI").

This is a case of "**origin discrimination**".

LIST OF PARTIES TO THE PROCEEDING

[X] All parties appear in the caption of the case on the cover page.

Lazhar Abbes

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pro se **Petitioner**,

VS.

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D/b/a Embraer Services, Inc.

Respondent.

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TABLE OF AUTHORITIES

Case Style: Lazhar Abbes v. Embraer Services, Inc.

District Court Number: 04-80652 CV-KLR

United States Court of Appeals, Eleventh Circuit, Atlanta, Georgia.

Appeal NO. 05-16439-DD

From Federal Court, The opinion of the United States Court of Appeals for Eleventh Circuit appears at Appendix B to the petition and is

[x] Unpublished.

RULES

See appendices **A** and **B**

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For case from federal courts:

The opinion of the United States Court of Appeals appears at Appendix **-A-** to the petition and is

[x] Reported at The United States Court of Appeals for The Eleventh Circuit; or,

[ ] Has been designated for publication but not yet reported; or,

[x] Is unpublished.

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[x] For case from federal courts:

The opinion of the United States District Court Southern District of Florida Appendix **-B-** to the petition and is

[x] Reported at The United States District Court Southern District of Florida; or,

[ ] Has been designated for publication but not yet reported; or,

[x] Is unpublished.

JURISDICTION

[x] For case from federal courts:

The date on which the United States Court of Appeals Eleventh Circuit decided my case was September 12, 2006

[x] For case from federal courts:

The date on which the United States District Court Southern District of Florida, decided my case was October 18, 2005

(i) This Court has Jurisdiction because this is an Appeal from a final judgment of the United States Court of Appeals for the Eleventh Circuit, on September 12th, 2006.

(ii) This is an "**Employment Discrimination Case**".

The complaint was filed on July 13, 2004. And a notice of Appeal filed November 08, 2005. The disposition below is that United States District Court Southern District of Florida issued a final judgment on October 18, 2005 and The United States Court of Appeals Eleventh Circuit, Atlanta, Georgia issued a final judgment on September 12, 2006.

The Courts, having wrongfully granted Summary judgment in favor of Defendant Embraer Engineering Services, Inc., against Plaintiff Orders and Adjudges that Final Judgments are entered in favor of Defendant Embraer Services, Inc. and against Plaintiff. Prior to final Judgment.

The recommendation by Judge Ann E.Vitunac of the United States District Court, Southern District of Florida and the final judgment before Anderson, Dubina and Hull, Circuit judges of The United States Court of Appeals, Eleventh Circuit that the Defendant's Motion for Summary Judgment is granted.

The Defendant's Motion for Summary Judgment stating that Plaintiff fails to set forth a Prima facie case is false since Mr. Abbes proves the following:

Mr. Abbes is member of a protected group.
Defendant's management harassed Mr. Abbes.
Defendant terminated Mr. Abbes without a valid reason.
Defendant replaced Mr. Abbes upon termination with other employees.
Defendant made exceptions for employees of Brazilian origin.

Mr. Abbes does not know what reasons and facts led to Mr. Correa and Mr. Hyama's demotions ("EESI") demoted them but did not fire them some times before closing the company. These are two Brazilians origin and this is clearly ("EESI") treated Brazilians more favorably than other employees. Mr. Abbes was terminated prior to Defendant's action this is absolutely true and any ex-employee will testify this action. "EESI" closed its doors in May 2005 for bad conduct and discrimination against all non-Brazilian employees especially of Arabs origin; many non-Brazilian left the company when opportunities with the Boeing company were available.

Mr. Baklund and Mr. Bouter's written declarations prove there was discrimination against employees of Arabs origin. Plaintiff Mr. Abbes is Tunisian, Arabic origin, was treated poorly in the terms and conditions of his Employment due to his national origin.

Mr. Abbes was assigned a deficient Catia workstation in a very harsh and hostile environment with severe air conditioning. Defendant failed to correct or respond to Mr. Abbes's requests and assigned that workstation only to Mr. Abbes since no body else accepted to work in a hostile environment, I have Mr. Stan contract engineer to witness and could be called if needed. Defendant engaged in discriminatory practice(s) with malice or reckless indifference and/or with wantonness, actual malice, deliberation, gross negligence, or utter disregard of law.

Defendant's managers harassed Mr. Abbes by adding more work loads every single day and asking for completion before even starting the job insulted with bad behavior and interpersonal relations. Mr. Hyama

Engineering Manager unfairly rated Mr. Abbes's Performance review. See appendix – **C-**, Knowledge competency page 50.

Defendant breached Mr. Abbes's employment contract agreement by failing to obtain a green card for him and his wife during his employment. See paragraph 1, page 7 of Appendix – **C -.**

Mr. Abbes did not fail to present proof of discriminatory actions against him as described in Plaintiff's Response to Summary Judgment. Defendant could not provide a valid reason for terminating Plaintiff's employment. Defendant's argument that the Plaintiff failed to exercise reasonable diligence in seeking future employment is wrong. There were no possibility for employment in the Plaintiff's field of Aerospace engineering and design for a long time.

Mr. Abbes conducted many researches to find employment. Note that Mr. Abbes is a Canadian citizen and cannot work without a TN visa (Trade Nafta). This requirement makes it more difficult for Mr. Abbes to obtain employment in the United States.

Following is a correction to Page 5 of Report and Recommendation stating that: ("...Instead, Plaintiff relies upon a series of conclusory allegations about his treatment while employed. For instance, Plaintiff makes a vague statement that he was transferred to the structures group against his will....").

The answer to this statement is: Mr. Abbes was transferred to the Interior group, which is another specialty of aerospace engineering and Mr. Abbes had no interest nor experience to work in this field especially there was a new project in his field just started prior to his transfer. He was forced to transfer against his will.

Mr. Abbes did not obtain his green card. This statement is accurate and not a conclusory allegation as stated in Defendant's argument. Defendant's allegations of Plaintiff's poor performance, arguing with his supervisors and refusing to conform his drawings to certain specifications are unfounded and false. Plaintiff's performance was

excellent but was not recognized by his supervisors, all designs and drawings made by Mr. Abbes were to the Defendant's standards. No engineering work can be released without being checked for compliance therefore defendant's arguing that design work was not performed to the ("EESI's") standards is false.

In the final judgment by the United States Court of Appeals, Circuit Eleven citing on paragraph 3, page 18 in Appendix - A -, "that Abbes does not adduce any facts to prove that this reason was a pretext for ("EESI's") discrimination against him, and he admitted that his supervisor believed in the validity of their criticisms of him" (this expression was taken exactly as is from Defendant's brief). This statement is false Mr. Abbes never admitted any criticism by any supervisor this was only insults and harassment by defendant's mangers.

Conclusion: I, Plaintiff, respectfully plead that The Supreme Court review all aspects of this cause and brings the trial case to justice.

STATEMENT OF THE ISSUES.

Plaintiff was employed by defendant as a Product Design Engineer structures, from May 2001 to November 2002. Plaintiff performed employment duties in a competent and professional manner at all times during Plaintiff's employment with Defendant. Prior to Plaintiff's termination he was treated poorly in the terms and conditions of his employment due to his national origin.

Defendant's management/ownership is predominantly Brazilian. Prior to Plaintiff's termination he was treated worse in the terms and conditions of his employment than employees who were Brazilian origin. Plaintiff has been discriminated against in the terms and conditions of Employment on the basis of national origin discrimination

in violation of Title VII of Civil Rights Act of 1964, 42 U.S.C. &&2000e-2000e-17, as amended. Plaintiff has been discriminated against by being unlawfully terminated on the basis of national origin discrimination in violation of Title VII of the Civil Right Act of 1964, 42 U.S.C. &&2000e-2000e-17, as amended.

Relief sought: Awarding Plaintiff Lazhar Abbes his lost back pay and benefits. Awarding Plaintiff Lazhar Abbes prejudgment interest. Awarding Plaintiff Lazhar his cost incurred in bringing this action, including damages for emotional distress and mental anguish, in an amount of to be determined at trial.

STATEMENT OF THE CASE.

This is an action for declaratory, injunctive, and monetary relief brought by Plaintiff, Lazhar Abbes, against Defendant's former employer, Embraer Engineering Services, Inc.

Plaintiff was subjected to unlawful employment discrimination on the basis of his National origin.

a) Nature of the case:

On November 15, 2002 Defendant Embraer Engineering Services, Inc. terminated Mr. Abbes's employment. Plaintiff has lost wages and benefits as a result of Defendant's Discriminatory actions. Plaintiff has suffered significant mental anguish and emotional distress as a result of Defendant's discriminatory actions. Mr. Abbes lost additional expenses in relocation, including home residence in Toronto was sold under market price for quick moving and lost in Canadian dollar exchange in 2001, where the Canadian dollar was very low.

b) The course of proceeding:

The United States District Southern District Court of Florida and the United States Court of Appeals Eleventh Circuit Erred by granting summary judgment to Defendant Embraer Engineering Services, Inc.

c) Statement of Facts:

Plaintiff has sufficient proof of discrimination against him by Defendant's Management. For farther explanation see Appendix **-C-.**

SUMMARY OF THE ARGUMENT.

The Statement of Facts and the exhibits referred to the response of defendant's motion for Summary judgment is in dispute. The defendant's Summary judgment remarks of repeated disagreements with Mr. Abbes's managers over the aircraft design drawings. Defendant managers' proposal to change Mr. Abbes's design was inappropriate for the fitting of the parts, See Deposition 15.

The defendants disagreed on some parts: Rib #1 and Fittings, which Mr. Abbes redesigned for safety and stress related purposes that the managers failed to investigate. Defendant's criticism of bad performance was unjustified since plaintiff has completed successfully many design work for ("EESI") and supported the engineering group for the tank's project. See design list, Appendix - **C** -.

Plaintiff had a very poor performance's review and was reviewed under module 2 level, while he was hired under module 4 level. See knowledge competencies and skills evaluation, Appendix **–C-**, and deposition12.

The assignment probation was violated. ("EESI") did not let Mr. Abbes complete the permitted time for the probation. See probation violation, Appendix – **C** -. ("EESI") was wrong to terminate Mr. Abbes employment and violated his employment contract agreement by not fulfilling the promise to acquire a green card for Mr. Abbes's spouse and himself. This was the main reason that Mr. Abbes accepted relocation from Canada and employment with ("EESI"). See Appendix – **C** -, (Employment offer), all other defendant's Employees had their green cards. The reason given for Mr. Abbes's termination was false and used as a pretext to discriminate against him. Therefore, He was discriminated against in the terms and conditions of employment on the basis of national origin discrimination violation of Title VII of the Civil Rights Act. Of 1964, 42 U.S.C. && 2000e-2000e-17, as amended.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S RESPONSE TO SUMMARY JUDGMENT

Plaintiff, hereby respectfully submits this memorandum in support for his summary of judgment, pursuant to Fed. Rule Civ. Proc. 56. Defendant ("EESI") terminated Mr. Abbes because of his national origin, according to the sworn witnesses testimony set forth in the accompanying Statement of Material Facts in Dispute.

Mr. Abbes firmly states that ("EESI") manager's criticism of bad performance is not true See Deposition 5, P6-8 and more design work were completed. The answer to Defendant's arguing for the design ideas, Mr. Abbes did not mention any differences to the methodologies used by ("EESI").

There was no refusal to conform to ("EESI'S") methodology and all designs were done to Defendant's requirements and standards. Mr. Abbes has respected the Defendant's standards. All work was done in

compliance to ("EESI'S") STD. Mr. Abbes never rejected management's directions since they never gave any directions.

Plaintiff Mr. Abbes was transferred to the Interior group even though he had no interest in doing interior design and there was a project for the structures to design a new Pylon. He was forced to be transferred against his will. For all the above, Plaintiff Mr. Abbes should be entitled to summary judgment in his favor against ("EESI").

ARGUMENT RESPONSE

All interrogatories and admissions are on file and there are sufficient elements essential to trial. ("EESI"), replaced plaintiff by other personnel in his position of the structures. In the meantime, Mr. Abbes and other design engineers were transferred to the Interior's group, some of them were incompetent and had less experience. These employees were not terminated. The latest included many Brazilians who did not speak English and remained employed at ("EESI"). This was clearly a preferred group of Brazilians who were treated favorably by defendant ("EESI") even though they did not have the required level of experience and qualifications. Some of them were even promoted to higher positions including Mr. Lacerda, Mr. Tinoko, and Mr. Beck, who were hired after Mr. Abbes and possessed no more experience.

The fact is that all managers at (''EESI") were Brazilians and all non-Brazilian personnel were never promoted even though they had more qualifications and engineering experience. For example, Mr. Abbes demonstrated his ability to manage and support the structures group while doing design work with the successful completion of the Tank project. Plaintiff' wrote his comments in the performance review saying that the managers need to improve their communication skills, consistency, share information with all employees and listen to proposed approaches by others. See Appendix – **C** -, Knowledge

Competencies... Comments. The fact that "EESI'S" managers did not listen to everybody as stated by defendant's Motion for Summary Judgment pages 4 and 5 and for this reason there was a lack of communication. In defendant's pretext stating that Mr. Abbes's own admission, his managers believed in the validity of their criticism of him was only harassment, without merit. The fact is that these managers do not acknowledge how much work Mr. Abbes has completed successfully for ("EESI").

Mr. Abbes was doing everything from structures to composites to interiors Designs, there are no many design engineers who can demonstrate such expertise, as it requires qualifications and Years of experience. The managers' criticism was done on purpose to harass Mr. Abbes as they probably wished that he would engage in a dispute as mentioned by Defendant, their criticism was never admitted by Mr. Abbes as mentioned by the Court of Appeals in final judgment.

Mr. Abbes was placed in a very harsh working environment with severe air conditioning, where nobody else wanted to work, Mr. Stan an engineer contractor could witness the truth. Mr. Abbes addressed the air conditioning problem with the managers who failed to fix the issue and the HR. person was not available, (in maternity leave). Mr. Abbes felt that he had no choice and brought a heater to his working place (in Florida?). Also, plaintiff was left without an assigned Catia workstation. He had to look for an available Catia station daily to do his work and there was loss of time in computer configuration and difficulties accessing other applications.

Defendant blocked Mr. Abbes's access to important computer programs, including Embraer STD. and DWG. References these resources are needed to complete his work.

Defendant's comment in defendant's motion for summary judgment stated that Mr. Abbes clearly did not made reasonable efforts to obtain substantially comparable employment. There were no employment

opportunities available in Mr. Abbes's field during that time, after many searches including companies, Internet websites and employment agencies; Mr. Abbes decided to do his own business hoping to get an income to support his spouse and himself.

Mr. Abbes is a Tunisian origin, Canadian citizen and requires a TN (Trade Nafta) visa to work in the United States.

Conclusion: For all the reasons stated above, Plaintiff Mr. Abbes respectfully requests that this Court grants Summary Judgment in his favor and requests the defendant to pay compensation for damages and expenses. **Please read Note below.**

NOTE:

Embraer Engineering Services, Inc. **(management/Ownership is predominately Brazilian)**, and subsidiary of **Embraer Brazil**. Started business to support Aerospace engineering design services to Embraer Brazil. Embraer Engineering Services, Inc. was established in the United States in mid 2001 and closed on May 2005, their office was at 4600 E.Park Drive, Palm Beach Gardens, Florida.

Plaintiff Mr. Abbes was asked by Embraer's Brazil Specialist to divulgate everything he knows about Engineering design and technical Information related to his previous experience with Bombardier aerospace and other Aerospace Companies. Mr. Abbes refused to give any information. And replied to the specialist that this is confidential and can not be divulgated to any employer.

Since that day, Mr. Abbes believes that the purposes of Embraer Engineering Services, Inc. was to collect technical and engineering information from the United States and Canada. After fulfilling the need Embraer Engineering Services, Inc. closed its doors on May 2005 and returned to Brazil. Embraer Engineering Services, Inc discriminated against all Arab origins and all non-Brazilian origin including American

Nationals, See declarations in Appendix – **C** -. Plaintiff claim compensation at the amount of $550,00.00 to cover damages including lost of income, damages for emotional distress injuries and mental anguish. Other compensation relief as the court deems just and proper.

CONCLUSION

Based on the disputed factual record "EESI" lied to the District Court and the Court of Appeals in the contents of their brief to cover-up "EESI'S" management misconducts and discriminatory actions against Mr. Abbes and all non Brazilian origin employees. For the forgoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Lazhar Abbes

Date: January 10,2007

App. –A-

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEAL

FOR THE ELEVENTH CIRCUIT

No. 05-16439

Non- Argument Calendar

D. C. Docket No. 04-80652-CV -KLR

LAZHAR ABBES,

Plaintiff-Appellant,

versus

EMBRAER SERVICES, INC. ,

d.b.a. Embraer Services Inc. ,

Defendant-Appellee.

Appeal from the United States District Court

for the Southern District of Florida

(September 12, 2006)

Before ANDERSON, DUBINA and HULL, Circuit Judges.

PER CURIAM:

App. –A-

Lazhar Abbes, a Canadian and Tunisian citizen, proceeding Pro se, appeals the district court's grant of summary judgment to Embraer

Engineering Services, Inc., ("EESI"), in his suit alleging national origin discrimination under Title VII! On appeal, Abbes argues that the district court erred in granting summary judgment for EESI because EESI treated other Brazilian employees more favorably and its given reasons for his termination were a pretext.

We review a district court's grant of summary judgment de novo, applying the same standards utilized by the district court. S.E.C. v. Adler, 1 7 F .3d 1325,1332 (11 th Cir. 1998). The moving party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions 0n file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed.R.Civ.P.56(c). If the non-moving party bears the ultimate burden of proof regarding the claim at issue in the motion, that party, in response to the motion, must go beyond the pleadings and establish, through competent evidence, that there truly is a genuine, material issue to be tried. Celotex Corp .v. Catrett, 477

U.S. 317, 324,106 S.Ct. 2548, 2553,91 L.Ed.2d 265 (1986). Additionally, the non-moving party must present enough evidence to demonstrate that it can meet the substantive evidentiary standards that apply to the case, that is, that a jury could. Abbes mistakenly named Embraer Services, Inc., as the defendant. The final judgment notes that the defendant's correct name is Embraer Engineering Services, Inc.

Note: Was Embraer Engineering, Inc then renamed to Embraer Engineering Services, Inc.

App. –A-

The district court 's grant of summary judgment to Embraer Engineering Services, Inc., ("EESI"), in his suit alleging national origin discrimination under Title VII.!

On appeal, Abbes argues that the district court erred in granting summary judgment for EESI because EESI treated other Brazilian employees more favorably and its given reasons for his termination were a pretext.

We review a district court's grant of summary judgment de novo, applying the same standards utilized by the district court. S.E.C. v. Adler, 137 F.3d 1325,1332 (11 th Cir. 1998). The moving party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed.R.Civ.P.56(c). If the non-moving party bears the ultimate burden of proof regarding the claim at issue in the motion, that party, in response to the motion, must go beyond the pleadings and establish, through competent evidence, that there truly is a genuine, material issue to be tried. Celotex Com. v. Catrett, 477

U.S. 317, 324,S.Ct. 2548, 2553, 91 LEd.2d 265 (1986). Additionally, the non-moving party must present enough evidence to demonstrate that it can meet the substantive evidentiary standards that apply to the case, that is, that a jury could . Abbes mistakenly named Embraer Services, Inc., as the defendant. The final judgment notes that the defendant's correct name is Embraer Engineering Services, Inc. (See note above).

reasonably return a verdict in his favor. See Anderson v. Liberty Lobby 477 U.S.242, 255, 106 S.Ct. 2505,2514,91 L.Ed.2d 202 (1986). We view t e evidence and all factual inferences there from in the light most favorable to the party opposing the motion, and all reasonable doubts about the facts are r solved in

favor of the nonmoving. Burton v. City of Belle Glade, 178 F.3d 1 75, 1187 (11th Cir. 1999). "A mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." Walker v. Darby, 911 F.2d 1573, 1 77 (11th Cir.1990). A. National Origin Discrimination Title VII makes it an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. See Bass v. Board of County Com'rs. Orange County. Fla., 56 F.3d 1095,1103 (11th Cir. 2001); See also 42 U.S.C. § 2000e-2(a).

"In order to prove discriminatory treatment in violation of Title VII, a plaintiff must first establish a prima facie case of discrimination." Coutu v. Martin County Bd. of County Comm'rs, 47 F.3d 1068,1073 (11th Cir. 1995). We have stressed that courts should avoid a strict formulation of the element of a prima facie case. See Carter v. City of Miami, 870 F.2d 578, 583 (11th Cr. 1989).

Absent direct evidence of discrimination, a plaintiff in a termination can establish a prima facie case by showing that:

(1) he is a member of protected class; (2) he was subject to an adverse employment action; (3) he was qualified for the position held; (4) and he was replaced or treated less favorably than someone similarly situated outside of his protected class. Knight c. Baptist Hosp. of Miami, Inc., 330F.3d 1313,1316 (1Ith Cir. 2003). "To show that employees are similarly situated, the plaintiff must show that the employees are similarly situated in all relevant respects. ..it is necessary to consider whether the employees are involved in or accused of the same or similar conduct and are disciplined in different ways." Knight, 330 F.3d at 1316. An employee who committed multiple infractions is

not similarly situated to an employee who committed one infraction. Silvera v. Orange County, School Bd.,244 F .3d 1253, 1259 (11 th Cir.2001).

" A prima facie case of discrimination raises the inference that discriminatory intent motivated the adverse employment action." Coutu, 47 F .3d at 1073. "The employer may rebut this inference by 'clearly articulating in a reasonably specific manner a legitimate non-discriminatory reason' or the adverse action." ld. Quoting Conner v. Fort Gordon Bus Co., 761 F.2d 1495 1499 (11th Cir. 1985). "The heart of the pretext inquiry is not whether the employee agrees with the reasons that the employer gives for the discharge, but whet employer really was motivated by those reasons." Standard v. A.B.E.L, Servs., Inc., 161 F.3d 1318,1333 (1IthCir.1998).

"Once the employer satisfies this burden of production, the plaintiff then has the burden of persuading the court that the proffered reason is a pretext for the true discriminatory reason. "Coutu, 47 F .3d at 1073. "If the plaintiff does not proffer sufficient evidence to create a genuine issue of material fact regarding whether each of the defendant employer's articulated reasons is pretextual, the employer is entitled to summary judgment on the plaintiffs claim." Chapman v. AI Transp., 229 F.3d 1012, 1024 1025 (11th

Cir. 2000) (en banc). Upon review of the record and upon consideration of the parties' briefs, we find no reversible error.

The district court did not err in granting summary judgment for EESI because Abbes did not present a prima facie case of national origin discrimination. EESI concedes that Abbes, a Tunisian, is a member of a protected class and that he was terminated. Further, Abbes was qualified for an engineering position with EESI. However, Abbes cannot demonstrate that he was replaced upon termination or that EESI treated him less favorably than someone outside of his protected class.

Abbes does not allege that EESI replaced him upon termination. Abbes does argue that EESI treated a group of Brazilians more favorably and rewarded them with promotions, despite little experience. This evidence does not show, however, that EESI disciplined employees outside of Abbes's protected class, wit similar performance or behavioral issues, differently than it disciplined Abbes.

Abbes also claims that EESI transferred other engineers to the interiors group, but did not fire them despite their incompetence. However, he does not present any evidence of these engineers' incompetence, nor is there evidence that EESI demoted, but did not fire, Brazilians. Because Abbes present no evidence that EESI treated similarly situated engineers outside of his protected class more favorably than him, Abbes cannot prove a prima facie case of national origin discrimination.

Assuming that Abbes could establish a prima facie case of national origin discrimination, EESI is still entitled to summary judgment because Abbes cannot rebut EESI' s legitimate, non-discriminatory purpose for terminating him. EESI asserts that it terminated Abbes because of his constant disagreements with his supervisors. Abbes does not adduce any facts to prove that this reason was a pretext for EESI' s discrimination against him, and he admitted that his supervisors believed in the validity of their criticisms of him. Despite Abbes's assertions that his "performance was perfect," he presented no evidence to create a material dispute of fact that EESI' s reasons for terminating him were pretextual.

Accordingly, the district court did not err in granting EESI's motion for summary judgment as to Abbes's claims of national origin discrimination.

B. National Origin Harassment Abbes also argues on appeal that EESI harassed him by creating a "harsh work environment", transferring him to the interiors group, restricting his access to important computer

programs, pressuring him to complete work, an maintaining a cold work area. Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating "against any individual with respect to his compensation,

terms, conditions, or privileges of employment, because of such individual s race, color, religion, sex, or national origin." 42 V.S.C. § 2000e-2(a)(I). A hostile work environment claim under Title VII is established upon proof that "the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Miller v. Kenworth of Do than Inc, 277 F.3d 1269, 1275 (11th Cir. 2002). The employee has the burden of proving a hostile work environment. Edwards v. Wallace Community College, 49 F. d 1517, 1521(11th Cir. 1995). To establish a hostile work environment, a plaintiff must demonstrate five things, that:

(1) he belongs to a protected group; (2) he has been subjected to unwelcome harassment; (3) the harassment was based on the protected characteristic; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and thus create a discriminatory abusive work environment; and (5) the employer is responsible for that environment under a theory of either direct or vicarious liability. Miller, 277 F.3d at 1275.

Establishing that the harassing conduct was sufficiently severe or pervasive to alter the terms and conditions of employment has subjective and objective components. Mendoza v. Borden. Inc., 195 F.3d 1238,1246 (11th r. 1999) en banc). The employee must personally perceive the harassment as severe or pervasive. Id, Additionally, the environment must be one that a reasonable person in the employee's position would find hostile or abusive. Id.

App. –A-

Four factors are important in analyzing whether harassment 0bjectively altered an employee's terms or conditions of employment: (1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct was physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interfered with the employee's job performance. Id.

We must consider the alleged conduct in context and cumulatively, looking at the totality of the circumstances. Id. at 1242. However, mere utterance of an epithet which engenders offensive feelings in a employee does not sufficiently affect the conditions of employment to implicate Title VII. Harris v. Forklift Systems, Inc., 510 U.S. 17,21,114 S.Ct. 367, 371, 126 L.Ed.2d 195 (1993). After reviewing the record and the parties' briefs, we find no reversible error. The district court did not err in granting EESI's motion for summary judgment because Abbes cannot prove that any alleged harassment as so severe that it altered the terms and conditions of his employment. Even if the acts Abbes complains of qualified as unwelcome harassment, Abbes presents no evidence that EESI's management took these actions because of his Tunisian background. Abbes also presented an affidavit, which detailed discriminatory statements made by one employee towards another of Lebanese origin. However, there is no evidence that Abbes was privy to this statement so he could not subjectively perceive these statements as hostile. Further, such isolated epithets do not sufficiently affect the conditions of employment to implicate Title. Finally, Abbes cannot prove that the alleged incidents altered the terms and conditions of his employment. Therefore, Abbes cannot prove that EESI and its employee's conduct unreasonably interfered with his job performance. As a mere scintilla of evidence is not enough to defeat summary judgment, Abbes cannot show a material dispute of fact in order to defeat summary judgment.Accordingly, we affirm the district court's grant of summary judgment in favor of EESI. AFFIRMED.

App. –B-

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No. 04-80652-CN -RYSKAMPNITUNAC

FILED by \S\, D.C.

Oct 18 2005

CLARENCE MADDOK CLERK U.S. Dist. CT. Of

S.D. Of FLA, W.P.B.

LAZHAR ABBES,

Plaintif,

V.

EMBRAER SERVICES, INC.

d/b/a EMBRAER SERVICE, INC.,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

THIS CAUSE comes before the Court pursuant to the October 4, 2005 [DE 29] Report and Recommendation of Chief United States Magistrate Judge Ann E. Vitunac) recommending that Defendant' motion for summary judgment) filed July 29, 2005 (DE 21], be granted. Plaintiff filed 0 1ections to the Report and Recommendation on October 13, 2005 IDE 30). The Court, having viewed the Report and Recommendation, the objections filed thereto, and other pertinent portion s of the record, hereby

App. –B-

ORDERS AND ADJUDGES that the Report and Recommendation is RATIFIED,

AFFIRMED an APPROVED. Defendant's Motion for Summary Judgment, filed July 29,2005

(DE 21], is GRANTED. Final judgment shall issue by separate order.

DONE AND ORDERED at Chambers in West Palm Beach, Florida, this 18th day of

October 2005.

\S\, KENNETH L. RYSKAMP

UNITED STATES DISTRICT JUDGE

Copies provided:

Honorable Ann.Vitunac

Lazhar Abbes, pose

Counsel of Record

App. –B-

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No. 04-80652-CIV-RYSKAMP/VITUNAC

FILED by \S\, D.C.

Oct 18 2005

CLARENCE MADDOK CLERK U.S. Dist. CT. Of

S.D. Of FLA, W.P.B.

CASE CLOSED

LAZHAR ABBES,

Plaintif

V.

EMBRAER SERVICES, INC.

d/b/a EMBRAER SERVICE, INC.,

Defend

FINAL JUDGMENT

THE COURT, having granted summary judgment in favor of Defendant Embraer

Engineering Services, Inc., erroneously named in the Complaint as Embraer Services, Inc., and against Plaintiff Lazhar Abbes, hereby

App. –B-

ORDEAND ADJUDGES that FINAL JUDGMENT IS ENTERED in favor of

Defendant Embraer Engineering Services, Inc. and against Plaintiff Lazhar Abbes. The Clerk of Court shall CLOSE this case and DENY any pending motions as MOOT.

DONE AND ORDERED at Chambers in West Palm Beach, Florida, this 18th day of

October, 2005.

\S\, KENNETH L. RYSKAMP

UNITED STATES DISTRICT JUDGE

Copies provided:

Honorable Ann. Vitunac

Lazar Abbes, pro se

Counsel of Record

(2) SUPREME COURT, U.S.

06113 2006

No. OFFICE OF THE CLERK

In The
Supreme Court of the United States

Lazhar Abbes

Pro se **Petitioner,**

VS.

EMBRAER ENGINEERING SERVICES, INC.
D/b/a EMBRAER SERVICES INC.

Respondent.

Appendix C

Lazhar Abbes
6737 Houlton Cir.
Lake Worth, FL. 33467
Tel: (561) 304-3006

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DECLARATION OF LAZHAR ABBES

I, Lazhar Abbes, hereby state the following:

1- I joined Embraer Engineering Services Inc. ("EESI") in April 2001. See Exhibit 2 Employment offer. I assumed the position of Design Engineer. After about a month, I was appointed by "EESI" temporarily to the leader position to support the engineering structures group for the Tank's project. After successfully completing the Tank project, I was reassigned to my initial position. The defendant hired another group leader of Brazilian origin as my replacement.

The defendant explained that their decision to replace me was based on a requirement for the group leader to be a Brazilian, speaking Portuguese. When I was hired, there was no mention by "EESI" that speaking Portuguese was required to assume the position of a group leader. I worked at "EESI" until November 15- 2002 as the defendant terminated me. This affidavit in support of my motion for summary judgment in this action based on my personal knowledge of the facts.

2- Before joining "EESI", I worked for many aerospace companies as engineer in the design structures including Canadair, Dehavilland, McDonnell Douglass and The Boeing Company, I have more than 25 years of relevant experience.

3- I had a very good working relationship with all employees in my group and all other groups at "EESI", including employees of Brazilians origin. In my position as temporary group leader, I helped engineers in my group for many tasks and suggested design improvements for the Tank's project.

4- I had good working relations with my managers at "EESI" until Jan 2002, when the communications started to deteriorate and worsened by July 2002 with Mr. Correa and Mr. Hayama. See (Leaders behavior and conducts), Page 28.

5- Mr. Abbes professionally and successfully completed all assigned design work. See (Design lists), Pages 43-48 developed by Lazhar Abbes, Ref. Catia model file...and 145SR-Wing to fuselage fairing; many other design parts are not included in the list.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on this 10 day of September 2005:

\S\ Lazhar Abbes

DECLARATION OF GARY BAKLUND

I, Gary Baklund; hereby state the following; I joined Embraer Engineering Services Inc ("EESI") in May of 2001 and assumed the position of Product Development Engineer. I worked at "EESI" until Nov of 2004. I make this affidavit in support of Plaintiff Lazhar Abbes's motion for summary judgment in this action based on my personal knowledge.

Before joining "EESI", I worked for Freightliner LLC (1.5 yrs), Raytheon Aircraft Corp (4 yrs), Lockheed-Martin (1 yr), Boeing Commercial Airplane Group (10 yrs).

When I arrived at "EESI", I was one of the first eight design engineers to start in the newly formed company. Lazhar had started earlier and had been to Brazil for orientation. Of the original eight designers, Lazhar was deemed to be the most qualified by the existing management to assume the role of temporary lead for the structures group. He assigned work packages and was extremely helpful in getting the group set-up

and started in the unique processes and methods required by Embraer. In about July, Antonio Correa arrived and assumed the position of permanent lead. At this time, all work packages were re-assigned to "favorites" people who had worked with Correa previously and to Brazilians. Most U.S. citizens were given menial work assignments and were included in meetings only to be admonished. At this time, I overheard a conversation on the other side of the cubicle between Mario Kataoka (the stress group lead) and Amir Hadjese (a stress analyst) where Mario told Amir that he "didn't like his race of people, didn't like the food he ate, didn't like his face and that he was going to do everything in his power to see that he was fired".

I was later "loaned" to the Legacy business jet interiors group to represent structures there. Lazhar was later "loaned" to the same group under the lead of Sothon Yean. When Lazhar would submit work for release, I Was instructed by Yean to check his work and find anything wrong that I Could, to "make him look bad". No one else's work was ever put through that process. Sothon himself would frequently ask me for advice on how to do his own job. In the three and one-half years that I was there, no non-Brazilian was ever promoted to any kind of lead or management position.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on this 10th day of September 2005

\S\ Gary S. Baklund

DECLARATION OF MOHAMMED ZOUHIR BOUTER

I, Zouhir Bouter, hereby state the following:

1- I joined Embraer Engineering Inc. ("EESI") in January 2001 and assumed the position of Product Development Engineer. I worked at "EESI" until May 2005; I make this affidavit in support of Plaintiff Lazhar Abbes's motion for summary judgment in this action based on my personal knowledge.

2- Before joining "EESI", I worked for Raytheon Aircraft and British Aerospace.

3- I have known Mr. Abbes since I started at EESI. I had a good working relation with Mr. Abbes. Mr. Abbes was always helpful to me and others in conducting our professional activities.

4- I myself initially had difficult relationship with my group leader who was constantly criticizing my work performance to the extent of him telling me that "I was paid too much". This situation continued for quite some time to the extent of causing mental anguish and distress to me and my family in fear of loosing my employment. This situation persisted during the time frame when Mr. Abbes and Mr. Hijazie were being harassed by "EESI'S" Management

I declare under penalty of perjury that the forgoing is true and correct.

Executed on this 30 day of December 2005:

\S\ Mohammed Zouhir Bouter

Embraer Services, Inc, Services,
Inc, -Engineering Office
4600 East Park Drive, Suite 200
Palm Beach Gardens. FL33410 USA
Palm Beach Gardens, April 11, 2001

EMPLOYMENT OFFER

Mr. Lazhar Abbes
48 Hollybrook Crescent,
Toronto Ontario
Canada M2J7
Phone: (416) 496-7804

Dear Lazhar,
We are pleased to offer you the position of Product Development Engineer-Designer with monthly salary of US$ 6, 508.33, reporting to Fernando Ranieri, the General Manager -Engineering at Embraer Services, Inc, Engineering Department, pending successful clearance of your background check and drug screen, with employment to begin on Monday, April 30, 2001, The normal working hours will be from 7:30 a.m. to 5:00 p.m., including one hour for lunch (useful 8h30min per working day). Beginning with he semester ending in December 31/2001 you will be eligible to participate in our Profit Sharing bonus/Variable Pay Program, pro-rated as function of the number of months you worked in that semester and conditioned to performance achievement, with targets to be agreed upon prior to the beginning of each acquisition period.

When you relocate to Palm Beach County, you will be eligible for a relocation package, which includes:

Initially we ill file an application for TN Visa and HI-B Visa for you and the appropriate Visas for your family members

(dependents). Once HI-B and the family members Visas are obtained. Embraer Services, Inc. intends to support an application for a Green Card for yourself and your dependents.

Up to 30 days temporary living expenses for you and your family members (dependents), including hot 1, meals and car rental, some of which are taxable benefits to you, however Embraer Services, Inc. Engineering Office will compensate you for taxes owed.

Travel expenses for you and your family members to move to Palm Beach County. If you and your family '11 travel by your own car, Embraer will reimburse you for the associated travel expenses (fuel tolls, hotel, meals) for a two-day trip, instead of the air tickets.

Reasonable expenses for packing, transportation and storage (up to 30 days) of your household goods, including your car, which is also non-taxable.

NOTE: The above expenses will be paid by Embraer Services, Inc. provided you remain employed at Embraer Services, Inc. for two consecutive years. You will also e eligible for these additional benefits:
Embraer Services, Inc. recognizes at least 10 National Paid Holidays a year. You may accrue 5 days a year of 100% paid sick leave. 10 working days vacation per year, increasing to 15 working days after two years of continuous service and 20 working days after 10 years of continuous service.

Group medical, dental, vision and prescription drug program are available to you at no charge. There is a deduction per pay for dependent coverage.

Coverage is effective the first day of employment.
You will have a minimum of 1 x salary life insurance protection and accidental death benefit.

After a three -month waiting period, you may defer a portion of your income, up to 15%, into Embraer Se ices, Inc. 401(k) retirement plan on a pre-tax basis.

Embraer Services, Inc. intends to continue to provide these welfare benefits, but reserves the authority and discretion to modify or terminate them at any time in the future. Additional details and summary plans f these benefits will be provided to you together with all of the necessary hiring documentation u on receipt of this formal Job Offer signed by you.

By signing this Offer, you agree that you will not bring or disclose any confidential information from or about your former employer.

Once again, we are very pleased to be able to make you this offer and look forward having you join our team soon.

Sincerely,

\S\ Fernando Ranieri
General Manager Engineering
Embraer Services, Inc -Engineering Office

I have read and agree to the terms of this offer:

\S\ Lazhar Abbes

Embraer Services, Inc.
4600 East Park Drive, Suite 200
Palm Beach Gardens, FL33410

EMPLOYMENT PROBATION

DATE: November 01, 2002
TO: Lazhar Abbes
FROM: Ian Montgomeric \S\

During your employment, we have noted and advised you of inadequacy in your work product, team interaction and communications.

To enable you to improve, we provided direction and adjusted your assignments however you have resisted our direction and the complaints from your team leader(s) persist.

Embraer established this office to provide an engineering product of a big standard, and we do not have the luxury to accommodate anything less. Therefore, it has become necessary for us to place you on probation for a period of 4 weeks beginning Monday, November 4 th , 2002.

During this period we will expect you to improve your performance to the level compatible with your salary and experience to include but not limited to:

Quality of design
Meeting deadlines
Improve productivity Accepting constructive criticism

Management and your team leader will make themselves available for required support and to answer any questions you may have. If you do not perform at the required level either during or after your probation, you could be subject to immediate termination.

We sincerely hope you will use this opportunity to bring your performance o the required level.

I acknowledge that the terms of this memorandum have been discussed with me:
Comment: I do not agree with this statement of inadequate performance and productivities.

\S\ Lazhar Abbes

EMPLOYMENT TERMINATION

November 15, 2002

Lazhar Abbes
6737 Houlton Circle
Lake Worth, FL 33467

Dear Lazhar,
This is to confirm your employment is terminated with Embraer, effective as of November 15, 2002.

a. You shall be paid the balance of your unused accrued vacation, sick leave and banked hours.
b. Effective as of the date of termination of employment, y u may convert life and long-term disability insurance to individual coverage at our expense. You will be eligible to receive continuation coverage of medic dental, and vision benefits under COBRA at your expense for 18 months.
c. Embraer will assume the expenses for one-way coach aim c for you and your spouse to return to Toronto, Ontario, Canada.
d. You shall be entitled to exercise your options with respect to

your vested account balance in the Embraer 401(k) plan.

We wish you success in your future employment endeavors.

Sincerely,

\S\ M. Jennifer Aboud

Vice President, Human Resources

RESPONSE TO SUMMARY JUDGMENT

Plaintiff Lazhar Abbes, hereby respectfully submits this memorandum in support for his summary of judgment, pursuant to Fed. Rule Civ. Proc. 56. Defendant "EESI" terminated Lazhar Abbes because of his national origin, according to the sworn witnesses testimony set forth in the accompanying Statement of Material Facts in Dispute.

Plaintiff Lazhar Abbes agreed that there was a disagreement with one manager on an interior drawing but not on all the aircraft design or drawings as stated by defendant. Lazhar Abbes firmly states that "EESI" manager's criticism of bad performance is not true See Deposition 5, P6-8 and more design work was completed. As for the design ideas, Lazhar Abbes did not mention any differences to the methodologies used by "EESI". There was no refusal to conform to "EESI'S" methodology and all designs were done to defendant's requirements and standards. Lazhar Abbes has respected the defendant's standards. All work was done in compliance to "EESI'S" STD. Mr. Abbes never rejected management's directions since they never gave any directions. Plaintiff Lazhar Abbes was transferred to the Interior group even though he had no interest in doing interior design and there was a project for

the structures to design a new Pylon. He was transferred against his will because Mr. Antonio Correa did not want him in the structures group.

Mr. Correa who was the structures group leader made an arrangement with Mr. Hayama, Engineering manager to get Lazhar out of the Structures group. Mr. Hayama approached Mr. Abbes and told him that they wanted him transferred to the Interior. This was unfair to Mr. Abbes since he had no previous experience in interiors. For all the above, Plaintiff Lazhar Abbes should be entitled to summary judgment in his favor against "EESI".

ARGUMENT RESPONSE

All interrogatories and admissions are on file and there are sufficient elements essential to trial.

There were arrangements to replace plaintiff by contract personnel in his position of the structures. In the meantime, Mr. Lazhar Abbes was transferred to the interior group. Other design engineers such as Mr. Sothon Yean, who were also transferred to the Interior's group temporarily, were incompetent and had less experience. These employees were not terminated. The latest included many Brazilians who did not speak English and remained employed at "EESI". This was clearly a preferred group of Brazilians who were treated favorably by defendant "EESI" even though they did not have the required level of experience and qualifications. Some of them were even promoted to higher positions including Mr. Lacerda, Mr. Tinoko, and Mr. Beck etc.... The fact is that all managers at EESI were Brazilians and all non-Brazilian personnel were never promoted even though they had more

qualifications and experience in the field. For example, Mr. Abbes demonstrated his ability to support the structures group with the successful completion of the Tank project.

Plaintiff' wrote his employee comments in the performance review saying that the managers need to improve their communication skills, consistency, share information with all employees and listen to proposed approaches by others engineers. See attached Knowledge Competencies... Comments attached. The fact was that the managers did not listen to everybody as stated by defendant's Motion for Summary Judgment pages 4 and 5 and for this reason there was a lack of communication.

In defendant's pretext stating that Mr. Abbes's own admission, his managers believed in the validity of their criticism of him is a false statement and both courts erred in considering this pretext as true. The fact is that these managers do not acknowledge how much work Mr. Abbes has completed successfully for "EESI". The truth is Mr. Abbes was doing everything from structures to composites to interiors. There are no many designers who can demonstrate such expertise, as it requires qualifications and years of experience. The managers' criticism was done on purpose to harass Mr. Abbes as they probably wished that he would engage in a dispute.

Mr. Abbes was placed in a very harsh working environment with excess air conditioning, where nobody else wanted to work; Mr. Stan an engineer contractor could witness the fact. Mr. Abbes addressed the air conditioning problem with the managers who failed to fix the issue and the HR person was not available. Lazhar Abbes felt that he had no choice and brought a heater to his working place. Also, plaintiff was left without an assigned Catia workstation. He had to look for an available Catia station daily to do his work and there was loss of time in computer configuration and difficulties accessing other

applications.

Mr. Abbes access to important computer programs, including Embraer STD. and DWG. references, was blocked. Defendant's comment on page 10 of defendant's motion for summary judgment stated that Mr. Abbes clearly did not made reasonable efforts to obtain substantially comparable employment. There were no employment opportunities available in Mr. Abbes's field during that time, after many searches including Internet websites of employment agencies, Mr. Abbes decided to do his own business hoping to get an income to support his spouse and himself.

Mr. Abbes is a Canadian citizen and requires a TN (Trade Nafta) visa to work in the United States. Defendant's interrogatories questions shows some of them discriminatory see interrogatories responses next page.

Conclusion: For all the reasons stated above, Plaintiff Lazhar Abbes respectfully requests that this Court grants summary judgment in his favor and requests the defendant to pay compensation for damages and expenses.

INTERROGATORIES RESPONSE

Question NO.1

Identify any person with knowledge or information relevant to any claim or defense in this lawsuit; for each such person, describe in detail his or her relevant knowledge or information.

Response NO.1

Mr. Gary Buklund. Mr Aamer Hijazie and Mr.Zouhir Bouter have relevant information on work competency and discriminatory actions by "EESI", See declarations Pages 1-3.

Question NO.2

Identify and describe in detail information referring or relating to your claim that your national origin is Tunisian (Arabic), as alleged in paragraph 11 of the complaint.

Response NO.2

Birth certificate is attached as proof of Tunisian origin.

Question NO.3

Identify and describe your employment history (categorized by date and position held) since November 1, 2002, including but not limited to your title, salary, and any bonus or commission you may have received, and any document referring or relating to your answer to this interrogatory.

Response NO.3

Due to limitation of aerospace companies in the Palm Beach area, there was no opportunity to find a job in my field. From November 2002 to July 2004, I have been self employed and tried to get partnership in developing new products for consumer goods. From July 2004 to present, I have been working as C.E.O. of Decor Modules, Corp., in developing new products for residential and commercial interiors.

Question NO.4

Identify and describe in detail which "EESI" employees were treated more favorably than you, including, but not limited to, the name and job title of each employee, the national origin of each employee, a description of how the individual was treated better than you, and any documents referring or relating to your answer to this interrogatory.

Response NO.4

All Brazilian origin employees were treated more favorably by ("EESI"). They were given more respect, better positions and all management positions were given to Brazilians. ("EESI") management discriminated against non-speaking Portuguese since language was not mandatory in our employment offer.

Names of Brazilians holding higher positions in ("EESI") are as follow:

Mr. Mauro Hayama, Brazilian origin holding position of Engineering manager who can not read an engineering Drawing.

Mr. Antonio Correa, Brazilian origin holding position of engineering structures group leader showed no knowledge in the field.

Mr. Nivaldo Lacerda, Brazilian origin holding position of engineering group leader.

Mr. Gilberto Imamura, Brazilian origin holding position of engineering manager.

Mr. Celso Selsini, Brazilian origin holding position of engineering manager. Additional positions were created in the structures group as focal coordinators, Mr. Tinoco, Mr. Beck and Mr. Marcellino all Brazilians origin. The latest were promoted instead of many other non-Brazilians who have better education and more aerospace engineering experience.

Question NO.5

Identify and describe with particularity each instance in which you were discriminated against on the basis of national origin, as alleged in paragraph 17, 19, 20, 21 and 22 of the Complaint, and for each instance, if any, identify the individual who took such alleged action, the specific date and place of each instance, the alleged act of discrimination, any and all witnesses to each instance, and any documents referring or relating to your answer to this interrogatory.

Response NO.5

After 9/11/2001, Mr. Mauro Hayama and Mr. Antonio Correa started acting unfavorably in non-respectful manners and communicated abruptly and unfriendly with me and other Arabic origin. Both managers were checking every move I did, were talking in Portuguese and sometimes mentioned my name and Mr. Aamer Hijazi then laughed together right beside me. They repeated this action very often , I felt personally attacked and discriminated. Anytime I asked Mr. Correa to obtain from Brazil information needed for work, it would become a personal attack and he never replied to my requests.

Mr. Correa induced me in error on the tank's fairing design by supplying the wrong information for the deflection side even though I advised him to get the correct information in advance. (This caused me to redesign the fairings twice). I was treated poorly, with no regards to the terms and conditions of my employment because of my national origin. When I was transferred to the Interior group, this was a breach of contract because they removed me from my assigned employment as a structures design engineer.

I was placed in an inadequate working environment in an area with excess air conditioning and electrical interference with Catia to the point that I had to bring a heater and they laughed at me. I was not assigned a specific workstation (Catia) Computer Aided Design. They removed my access to important computer programs related to my work including Embraer's standards and drawings References information. I could not complain to the Human Resources as Mrs. Suzanne Thomas was on maternity leave. Mr. Montgomery, Director of ESI was nowhere to be found.

Lazhar Abbes was unlawfully terminated on the basis of national origin discrimination in violation of title VIII of Civil

Rights act of 1964, 42 U.S.C. $$2000e-20002-17 as amended. For the reasons above, Mr. Lazhar Abbes respectfully request that ESI be charged for discrimination, harassment and violation of human rights acts and labor laws. ESI should compensate Mr. Lazhar Abbes for damages including income loss, emotional distress and mental anguish

Question NO.6

Identify and describe with particularity each instance in which you complained to anyone at EESI about alleged national origin discrimination against you, and for each instance, if any, identify the name and job title of the EESI employee to whom the complaint was made, the specific date of the alleged complaint, how you described the alleged discrimination to the individuals, each of their responses to your statements, and any documents referring or relating to your answer to this interrogatory.

Response NO.6

When discrimination against me accentuated in July to November, I could not report any complaint to Mrs. Suzanne Thomas, Human Resources administrator. Mrs. Thomas was on maternity leave and there was no other assigned person for her replacement. Mr. Hayama and Mr. Imamura harassed me on my job performance and accused me of bad behavior and bad communication skills. In addition to my regular work, the management of EESI assigned me tasks that were not required (ref: oxygen tank) just to add extra workload.

Question NO.7

Identify and describe with particularity each instance in which you complained to any person about EESI's allege national origin discrimination against you, and for each instance, if any,

identify the name of the person, the specific date of the alleged complaint, how you described the alleged discrimination to each person, each of their responses to your statements, and any documents referring or relating to your answer to this interrogatory.

Response NO.7

In many instances, I discussed the issue with Mr. Aamer Hijazi about our discrimination but did not have the chance to address it to the Human Resources administrator, for the reason mentioned above (maternity leave). I also mentioned to Gary Baklund about EESI's discrimination against employees of Arabic origin.

He agreed with me that EESI also discriminated against non-Brazilians for promotions and showed no respect. Additional employees could testify the same.

Question NO.8

Identify and describe with particularity each instance in which an employee of EESI (besides yourself) was discriminated against on the basis of his/her national origin, and for each instance, if any, identify the affected employee, the individual who took the alleged discriminatory action(s), the specific date and place of each instance, and the alleged act of discrimination, any and all witnesses to each instances, and any documents referring or relating to your answer to this interrogatory.

Response NO.8

Mr. Aamer Hijazi, Arab Lebanese origin was discriminated against and was terminated for the same reasons as myself. According to Mr. Hijazi, Mr. Hayama initiated all

discrimination acts against him.

As for the listed names of terminated employees Mr. Aamer Hijazi, Arab Lebanese origin was discriminated and discharged. Lazhar Abbes, Tunisian origin was also discriminated and discharged. I believe that Mr. Gary Hollingsworth and Mr. James Cowley were discriminated due to old age, EESI failed to provide them training, coaching or counseling and were discharged immediately. Many other employees were discharged and their names were not included in the defendant's response NO5. Mr. James Cowley, Mr. Gary Hollingsworth, and others that I know only by their first names: Ken, stress engineer, and two other stress engineers I do not know their names.

Question NO.9

Identify and describe with particularity information referring or relating to your allegation that you were performing your employment duties in a "competent and professional manner at all times during plaintiff's employment with defendant," as alleged in paragraph 16 of the Complaint.

Response NO.9

My relevant experience as an aerospace design engineer structures exceeds 25 years (see attached resume). I provided at all times EESI with good work and productivity in designing many structured parts (see attached list of completed work) and many more could be found in EESI's Catia database. At the same time, I was supporting the structures group and answering all engineering questions related to design approaches and optimizations. During my employment with EESI all my work was done in professional and competent manner. Also attached a testimony for proof of qualification from TDM Technical Services.

I had difficulties with Embraer Engineering in Brazil, as they would not accept that their concept of the rib #1 and the fittings were not efficient to support the tank. I had to redesign both, to sustain the tank's loads with better conception, and had to ask the stress group (EESI) to support my design changes. My design work demonstrates and proves that I am a qualified and experienced engineer. I made every effort to benefit the company from waste and inconsistency. I gave this written statement to Mr. Hayama at the time of my job performance evaluation and it was not added to my file. (See statement attached)

Question NO.10

Identify and describe in detail the "significant mental anguish and emotional distress" you allegedly suffered, as alleged in paragraph 25 of the Complaint, and any documents referring or relating to your answer to this interrogatory.

Response NO.10

I was harassed, discriminated and pushed in doing my work by Mr. Hayama, Mr. Correa, and Mr. Imamura at "EESI". I suffered significant mental anguish and emotional distress every day of work.

See Response to probation notice Page 15 and leaders behaviors and conduct Page 18 - 22. I could not convince these managers that they were doing wrong in their actions. They continued discriminating against me every time we discussed any work related issues. I am still suffering mental anguish from attacks by the listed above managers for unjustified reasons of poor performance, bad behavior and bad communications skills.

Question NO.11

Describe with particularity the information provided by you or

on your behalf to the Palm Beach County of Equal Opportunity, the EEOC, or any other administrative agency, in connection with your claims against EESI in this matter.

Response NO.11

See attached Charge of discrimination filed date March 2003, (Exhibit 1) and dismissal and notice of right (Exhibit 2).

Question NO.12

Identify and describe in detail the efforts you have made to become eligible to work in the United States.

Response NO.12

North America Free Trade Agreement, NAFTA permits professionals of Canada and the United States to work in either country under Trade agreement. I am a member of those qualified professional and I am allowed to work in the United States, using TN visa. I have been employed under TN visa twice with the Boeing Company and once with Embraer Services Inc. (EESI).

Question NO.13

Identify and describe in detail all efforts made by you or on your behalf to inquire about, apply for, or obtain employment since your termination of employment with EESI, and any documents referring or relating to your answer to this interrogatory.

Response NO.13

Due to limitation of opportunities for aerospace engineers in Palm Beach area, I decided to start my own business.

Question NO.14

Identify and describe any employment position that you have held during the period between your termination of employment with EESI, and any income you have received for each job.

Response NO.14

N/A. See responses NO. 3 and NO.13.

Question NO.15

For each claim that you allege in the complaint, itemize the damages, attorney's fees and cost that you contend you are entitled to recover from EESI, and identify and describe with particularity the factual basis for each element of your claimed damages, attorney's fees and costs, and identify any documents referring or relating to your answer to this interrogatory.

Response NO.15

I claim compensation in the amount of $550,000.00 to cover damages including loss of income, damages for emotional distress and mental anguish. Other compensation relief as the court deems just and proper.

Question NO.16

Identify each occasion in which you have provided testimony under oath within the last ten years. Your identification should include the full case name, case number and jurisdiction for each such case, and a brief statement as to the subject matter of the litigation.

Response NO.16

N/A.

Question NO.17

Identify each occasion in which you have provided testimony under oath within the last ten years. Your identification should include the full case name, case number and jurisdiction for each such case, and a brief statement as to the subject matter of this litigation.

Response NO.17

N/A.

Question NO.18

Identify and state the qualifications and provide current curriculum vitae for each person whom you expect to call as an expert witness at the trial of this matter, and for each person so identified, state the subject matter on which each person is expected to testify, and state a substance of the facts and opinions to which each person is expected to testify, and state a summery of the grounds for each expected to be given these persons.

Response NO.18

Mr. Aamer Hijazie could testify on the discrimination actions against him, Mr. Abbes and the violation of the federal labor law for a 2.1/2 unpaid worked hours above the weekly regular 40 hours. Mr. Buklund could testify on the discrimination actions against Mr. Aamer Hijazie, technical background identifications and approval, unpaid worked hours (ref: 2 ½ per week) and the assignment of bad working conditions to Mr. Abbes. Mr. Bouter and Mr. Buklund's declarations are a proof of discrimination.

PROBATION NOTICE RESPONSE

The probation notice was given to me unexpectedly and its whole content is not true. I was not advised of any inadequacy in my work product nor team interaction and communications. The management of Embraer acted in an unfair and unprofessional manner towards me on a daily basis. The purpose of this notice was to support their false allegations. Their reason is a pretext false and they knew it is false.

The statement that Embraer mentioned: " ...do not have the luxury to accommodate anything less... " Is not a requirement for any employment of professionals? My performance of all engineering design For Embraer Services Inc. was excellent including Quality of design, Meeting deadlines and Improved Productivity. I received only negative criticism from my managers even though I showed them a higher quality and conception design surpassing their expectations. Despite my high productivity and work quality, Mr. Hayama wanted to reduce my salary at the time of performance review.

I always met my scheduled deadlines and was bringing ideas for improvements not to mention many suggestions for design changes on safety and stress related. I helped the stress and design teams for many good design and conceptions.

The statement: "Management and team leaders will make themselves available... " Was just a lie. "EESI" did not made any effort to reconsider their decision to terminate my employment even though I showed a great progress on the probation task. I always did my work successfully without any supervision or management help. Note that the probation time was not respected I was terminated in less than two weeks. Also, the Management increased their harassment as I was working on the assigned project and interrupted me for other tasks not related to the probation project. In three days, I was

able to determine the necessary work to complete the project and identified that the interiors and structures groups did not yet develop some needed interfaces. At the same time, I completed other work they claimed was urgently needed. I did not get the information on parts designed by Brazilians in the interior group because they could not speak English.

I was chocked to have a notice of probation that day. Defendant's management did not allow me to speak or discuss any reason about the probation notice. I was interrupted, harassed with many words such as: incompetent, bad behavior, bad communication skills. Stated by Mr. Hayama... I acknowledge receiving this notice with the remark that says: I do not agree with this notice and its contents. I was never given any warnings related to my work and design performance during my 25 years of experience.

PROBATION VIOLATION

Nov. 06-02:

I received a request to design 3 sections of the airplane: harness interfaces with structural parts and the installation drawings, including brackets design and detailing T.B.D. (To be determined) for each section within a month. (Note: None could accomplish this task within a month). This project requires investigation related to all areas of the plane including interior components, structures and harness that were not yet defined.

Nov. 08-02:

On Nov 7th, within a limited four hours, I completed all investigations related to the assigned project. I determined projected reasonable time to do the job. On Nov 8th, I presented

the project timetable to Mauro and Imamura. Our discussion took a negative turn when Mauro accused me of bad behavior, communication and unsatisfactory work. He also started giving me suggestions about engineering design that he could not understand. At that time, I requested a written task from both Mauro and Imamura. They refused to do so.

Note: While searching for part models in VPM (Virtual Product Management), I noticed that a file I designed had changed its ownership from my name to someone else. Other designs that I completed were also changed to reduce my performance within the company. This responsibility breach is unprofessional it could be a serious safety factor and never happened in any other aerospace industry.

Nov. 12-02:

In a meeting with Imamura for estimated time to CTR #4, I agreed to carry on the work accordingly.

Then, Imamura changed the discussion to the bracket drawings 135-1070, 135-1071 and 135-1072 markups to be fixed according to inexperienced design engineer. I explained to him that there was no need for change according to design optimization and stress agreements. He disagreed, started arguing with me and through the package on me, telling me to fix it per his suggestions.

Note his suggestions were not appropriate to the fittings of the parts as designed. I told him that if he was not happy with my work, I could go back to my initial structures group, He told me that I had no place to go back to and that they did not want me there. He told me:" You did not hear it from me."

Nov. 14-02:

Mrs. Elaine Perrera, the office manager called me and asked me

to meet her at the engineering director's office. I met her and Mrs. Jennifer Aboud, VP Human Resources at Embraer Holding, Inc. was also present. Mrs. Aboud announced that she had bad news for me. She told me that my job was terminated as of today adding that I did not improve. I asked what improvement she was referring to. I told her that not only I was doing my job properly; I had made significant progress on the probation task. I told her that part of my work could be seen on Catia Dir: C06labbes.
I told her that I did a very good job for Embraer Services Inc. I said that I was willing to continue in doing so. I told her that if Embraer Services Inc maintains its decision to terminate my employment, it would be a loss for both sides, not to mention this was a breach of the terms of my employment contract. Mauro came in and ordered me to leave the company immediately without a written employment termination and followed me to pickup my belongings and checked for anything that is proprietary of "EESI" and get me out to the door.

Note: When I started at Embraer Services Inc, I was assigned the temporary supervision of the structures group for three months. I helped the stress-engineering group for many parts including improvements and data translations. I improved design concepts in many areas of structures, APU, composites and interiors. With such quality of work and productivity, I did not deserve to loose my job.

LEADERS BEHAVIOR AND CONDUCT

ANTONIO CORREA: Team leader, structures
Antonio was unable to communicate in clear English to express himself or to address properly what he wants. This was a

problem of communication that led to confusion. Antonio does not listen to what others have to say, does not like any input of different ideas or recommendations for better design solutions. Each time, Antonio could not answer my request for technical questions, he would ask help from other Brazilians in Portuguese without letting me know what the answer was, or called Brazil and never came back to me with the answer. (All Brazilians do the same thing). Note these questions were related to design recommendations and missing design information from Brazil. Antonio showed very little experience in design structures approaches.

In meetings, he would not allow input for suggestions or recommendations. He brings only news from Brazil or requested changes by the stress group, not allowing further discussions. This is a proof of unqualified leader. Bringing suggestions for improvements victimized me to the point that I stopped saying anything in his meetings. One day, we had an argument on design issues. He could not understand and it became a personal attack against me.

I requested a meeting with him and in the conference room, he could not agree to cooperate with me and repeated that nothing is personal witch was not true. After that meeting, Antonio started acting in a very unfriendly manner and stopped talking to me. He also prevented me from working on the Pylon project that is structures related. One day, Mauro called me and asked me to be transfer temporarily to the Interior group to help them with structures interfaces design. I accepted his request in fear of loosing my job. I was removed from my position design structures to other work that is not related to my experience in the fields of (interiors and composites). Note that I was removed from the structures to the composite group, which is another specialized engineering even though I performed all my work efficiently and accurately. In designing the fairing panels, I

requested Antonio to obtain from Brazil the correct deflection side. Since he provided me the wrong information I had to redesign the fairing panels twice.

MAURO HAYAMA: Engineering manager

Mauro started questioning my education and tried to reduce my salary by changing my position level. Refer to knowledge, competencies & skills evaluation attached. He asked me to complete classification (I) and dictated the rated % input for evaluation. (See employee comments and additional sheet attached). I was deprived from my rights in getting a fair evaluation and a salary increase. Mauro never let me speak, interrupted me and never paid attention to my comments, suggestions and explanations.

Mauro showed no experience in engineering design and argued on designs he does not understand. These issues were ongoing because of his lack of knowledge and experience.

Mauro accused me of bad behavior, unsatisfactory work and bad communication. I was harassed almost every day by one of the leaders; especially Mauro who was using his power in his manager's position to intimidate me. Prior to my termination, Mauro, Antonio and Lacerda were avoiding me during recreation times as well as many other Brazilians.

Note: There was a pop up of focal peoples (or coordinators), all Brazilians, without notice, Tinoco, Marcellino, and Jose Beck.

LACERDA: Group leader, Interior

Lacerda was avoiding any request I asked for. In a meeting, he asked me to provide a checklist related to Catia (Cad System) models settings for which he already had a copy from the time he was working in the structures group. I told him that I would give him a copy of the list if I find it. In an unscheduled

meeting, he requested "the checklist Lazhar!" For few seconds, I thought that he was asking about the new parts checklist not the Catia's. I said that I was still working on it. He replied "the checklist Lazhar!" in a very angry manner and at this moment I recognized that he was asking for the Catia's checklist. I said why you don't you tell me the Catia's model settings checklist! He was very mad at me in front of everyone in the meeting room. I went and got copies of that list and distributed to the group. Since that day Lacerda was avoiding me and looking at me with hate. Many times I needed to address issues with him. He never paid attention to my requests to get the work done.

IMAMURA: Team leader, Interior
I was assigned temporarily for 3 months to help the Interior group for the design of the structures interfaces. I was told to report to Gilberto Imamura and started by an assembly of the oxygen system that was not part of the structures, which I completed and left unreleased for manufacturing. Then, I started working on brackets and channels for various systems and locations in the airplane.

Imamura expected every job to be done before I even started it without knowing the requirements to complete an engineering task. There was always missing information on every job to be done and difficulties communicating with Brazilians in the interior because they do not speak English.

Imamura was criticizing my design work for drafting details that were made by others and repeated arguments many times. He also argued on other detailed drawings for which he could not understand why I had designed and dimensioned them that way. (NOTE: Some sheet metal designs require bend radius clearance that was reflected in some detail drawing.)

Other arguments were about the counter top Assembly. And this one was repeated to me many times with anger. This drawing was completed except some information for the next assembly was missing. I had no information about it and we agreed that another interior designer would complete it. Note that the drawing was completed except for a very small addition to reference on the drawing was not available in time.

RESPONSES TO REOUESTS FOR ADMISSION

1. Currently, you are not authorized by the U.S. Citizenship and Immigration Services
to be employed in the United States.

Response to request 1: I am not violating the immigration law since I have a TD (Trade Dependent) visa supported by my wife Mrs. Lise Abbes, under TN visa and I am not working for any company.

2.You have not been authorized by the U.S. Citizenship and Immigration Services to
be employed in the United States since November 1, 2002.

Response to request 2: See response 1 above.

3. Exhibit 1 hereto is an authentic and genuine copy of a document entitled Confidential Information and Intellectual Property Agreement (the "Agreement") between you and Embraer Services, Inc., signed by you on or about May 3, 2001.

Response to request 3: I acknowledge existing agreement and

respected all confidentiality pertinent to the defendant's intellectual property agreement.

Embraer Services Inc. brought a specialist from Brazil who had meetings with employees who were previously employed by Bombardier. He requested those employees including myself to divulgate all confidential information pertinent to Bombardier, a Canadian aerospace company. My response was that I had not worked for Bombardier lately and this is confidential and should not be requested.

4. In Section 2(c) of the Agreement, you promised that upon the termination of your employment, you would return all items containing "Confidential Information" (as defined by the Agreement) to Embraer, including designs, drawings, data, technical and business information relating to Embraer.

Response to request 4: I acknowledge existing agreement.

5. You did not return to Embraer Confidential Information upon your termination of employment.

Response to request 5: I returned all confidential information belonging to the defendant in 15 minutes time that I was given to clear my belongings and return the defendant's properties.

6. In Section 2(c) of the Agreement you promised that would not retain any copies of confidential Information after the termination of your employment.

Response to request 6: I acknowledged the agreement to not retain copies of confidential information and I did respect this agreement by returning all confidential information belonging

to the defendant.

7. You retained Confidential Information after the termination of your employment.

Response to request 7: I did not retain any confidential information related to the defendant.

8. Exhibit 2 hereto is an authentic and genuine copy of a design that you submitted to Embraer in response to Embraer's discovery requests.

Response to request 8: This design was a proposal only sent to (Embraer Brazil) as a suggestion for the machining of Stingers to reduce stress concentrations. This drawing was submitted to let them know that their concept and design were technically unreliable and unsafe. This drawing was not an official release and was not property of Embraer Services Inc. I took responsibility to make sure that all stringers in the tank must be chamfered at their ends and that was accomplished under my temporary supervision. Those drawings were Embraer's property and kept confidential.

9. Exhibit 2 is an authentic and genuine copy of a design that you created for Embraer while employed by Embraer.

Response to request 9: This is not a genuine copy of a design belonging to the defendant See response 8 above. A genuine copy must bear the company name designer, engineer's name etc...

10. Exhibit 3 hereto is an authentic and genuine copy of a list of designs that you created for Embraer while you were employed by Embraer.

Response to request 10: The list is not a genuine copy. I created this information at home by remembering some of my projects completed for the defendant, to prove my qualifications and productivity to the court.

11. Exhibit 4 hereto is an authentic and genuine copy of a list of designs that you
created for Embraer while you were employed by Embraer.

Response to request 11: I did not see this copy during the 15 minutes clearance time and decided to submit it to the court for proof of my productivity. I did not divulgate this information to anyone else. I did not take it purposely as it was hidden in my reference papers and did not see it in the 15 minutes time. The information on this list cannot be used to manufacture or produce anything related to the defendant's products therefore this list has no value.

12. You kept at least one copy of Exhibit 2 after your employment with Embraer was terminated.

Response to request 12: See response to request 8 above.

13. You kept at least one copy of Exhibit 3 after your employment with Embraer was terminated.

Response to request 13: See response to request 10 above.

14. You kept at least one copy of Exhibit 4 after your employment with Embraer was terminated.

Response to request 14: See response to request 11 above

Dated: May 02,*2005*
Respectfully Emailed responses,

By Lazhar Abbes
6737 Houlton Cir.
Lake Worth, FL. 33467
Tel:(561)304-3006

RESPONSES TO REQUESTS FOR PRODUCTION

Please produce, in accordance with the foregoing instructions and definitions, the following documents in your possession, custody or control:
1. All documents referring or relating to your efforts since November 1, 2002 to become eligible to work in the United States.

Response 1: I had a TN visa to 11-15-2002 under Embraer Services Inc. See response to request 1 admission, for your information a copy of my passport and TD, Approvals by the US immigration and covering dates will be faxed.
2. All documents referring or relating to whether you are currently authorized to work in the United States.

Response 2: See response 1 above. I am not working for any company. I created my own company; Decor Modules, Corp. and I am in the process of developing new products.

3. All documents referring or relating to whether you have been

authorized to work in the United States at all times from November 1, 2002 to the present.

Response to request 3: See response 1 and 2 above.

4. All documents referring or relating to any correspondence from November 1, 2002 to present by you, or on your behalf, with any federal, state, or local agency regarding your immigration status including, but not limited to, the U.S. Citizenship and Immigration Services.

Response to request 4: See response 1 to 3 above.

5. All documents referring or relating to your income during 2002, 2003, and 2004 including but not limited to your federal and state tax returns for 2002. 2003. and 2004.

Response to request 5: I did not work.

6. Any employment agreement that you have entered into with Decor Modules, Corp.

Response to request 6: Décor Modules, Corp. is my own company, which was lawfully created.

7. Any independent contractor or consulting agreement that you have entered into with Decor Modules, Corp.

Response to request 7: See response 6 above.

8.All documents referring or relating to Decor Modules, Corp.'s income and expenses, including, but not limited to, tax returns from 2002, 2003 and 2004.

Response to request 8: Article of Incorporation of Decor Modules Corp's copy will be faxed.

Dated: May 2, 2005
Respectfully Emailed responses

B y: Lazhar Abbes
6737 Houlton Cir.
Lake Worth, FL. 33467
Tel: 561 304-3006

COMMENTS AND RELEVENCE

Defendant "Embraer Engineering Service Inc." denial of discrimination is not appropriate. Mr. Abbes's job performance was excellent and very professional not to mention Mr. Abbes has over 25 years experience in engineering structures internationally including: Canadair, Dehavilland, MacDonnell Douglass and the Boeing company. Without hesitation, Mr. Abbes can prove that Embraer Service Inc. management and supervisory teams discriminated against Mr. Abbes and were unfair with him in their criticism of bad behavior and communication skills. Defendant has terminated Mr. Abbes from his work without valid reasons based on national origin discrimination.

Mr., Abbes mentioned on his last day that "EESI's" decision was unfair and a loss for both Embaer and himself. Mr. Abbes's work was always done properly, in a professional and timely manner without mistakes. He could prove it to the court by

going to defendant's Catia database and show how much work he has done for Embraer Service Inc. Note that he was one of the first employees at "EESI" and was assigned responsibilities for temporary leader of the structures group. Mr. Abbes supported every technical problem and answered all engineering questions. In addition, he took the most difficult parts of the program to design, including Rib #1, Fittings and many other parts. He had made many suggestions for design improvements; the stress group forced some of them for change approval. Mr. Abbes assumed temporary leadership of the structures group for four months, which ended with successful completion of the Tank program. Despite the additional responsibilities and workload, Mr. Abbes did not ask for salary adjustment or increase. He wanted to contribute in making the new "EESI"s" engineering office successful and permanent, hoping for a long-term employment.

Mr. Abbes supported the stress group for many tasks and supplied more information to accelerate Cad-Express process. Mr. Antonio Correa, who lacks experience and knowledge, did not understand the process could be done and blamed him for doing so. Mr. Abbes encountered difficulties with his supervisor, Mr. Antonio Correa who lacks knowledge of engineering design and communication skills. Each time he asked Mr. Correa for information related to work from Brazil, he never answered his request but went to Brazilians, spoke in Portuguese and never replied to him.

Mr. Abbes's job performance review was unfair. He was harassed about his education by Mr. Mauro Hyama who requested proof of equivalent education. The comparative education confirmed that Mr. Abbes's level of education is equivalent to a bachelor's degree in engineering design from an accredited college or university in the United States (see

attached documents). Therefore, Mr. Abbes met the requirements of his position as product development engineer design structures.

At the beginning of a new project, Mr. Abbes was forced to transfer temporarily to help another group responsible for interiors. He was assigned to the structural interfaces design. Many tasks were accomplished without problems not to mention input for improved design. After he started with the new group, he encountered similar behavior with the new manager, Mr. Imamura. Who is also a Brazilian and acted in support of others Brazilians managers and supervisors against Mr. Abbes he was harassed and pushed in his work.

Defendant removed his account access to some important computer programs related to work. After he joined the interior group, he was not assigned a permanent working place and had to configure Catia workstation each time, Mr. Abbes moved from one workstation to another. Then, he was given an inadequate Catia workstation located in an excess of air conditioning and stayed there until separation.

Mr. Abbes was questioned by Mr. Gilberto Imamura about simple drafting parts which he suggested be dimensioned differently. His request did not comply with the part design. Because he did not agree with Mr. Abbes's drawings, he threw the paperwork at him and wanted him out of his office immediately. The next day, Mr. Imamura called Mr. Abbes to his office and Mr. Hyama was also there waiting. They presented Mr. Abbes with an assignment for a new project and was told that this was a probation test.

Note that Mr. Abbes had been working for Embraer for over 17 months. They requested Mr. Abbes to complete the task within a month. Their request was unclear and ambiguous to the point Mr. Abbes requested a written task. Both refused. Mr. Abbes started gathering information and noticed that this task could

not be completed in their estimated time since there were parts, assemblies not defined and related to other interior designers who are Brazilians and do not speak English. In addition, this task is a large project and needs more time to develop. The next day, Mr. Abbes asked Mr. Imamura and Mr. Hyama to meet so he could present his report. Both did not like Mr. Abbes's input and jumped on him, telling him that he was unprofessional and incompetent.

Mr. Abbes noticed that Mr. Hyama does not understand a design or a simple technical drawing. While Mr. abbes was involved in the design, someone else completed a drawing that he had started without changing his name to his or her name. Mr. Abbes was held accountable for discrepancies and drafting practice. At that time, Mr. Abbes noticed that many of his completed product design were released under other designer names in Catia release directory. This act is unsafe, unprofessional and a plot to hide Mr. Abbes productivity. When Mr. Abbes asked to go back to the structures group, he was told that there was no longer a place for him. Two days later, Mr. Abbes was terminated even though he showed defendant he had made a good progress on the project.

Note that the harassment was daily; pushing Mr. Abbes to finalize every job he had started. The management and lead team of Embraer Service Inc. have caused difficulties to every non-Brazilian employee. Defendant claimed that Mr. Abbes has bad behavior, bad communication skills and above all Mr. Hayama and Mr. Imamura argued about many engineering rules and principles they do not know. It has been a nightmare that Mr. Abbes will never forget. Note that he could not complain to the person responsible for Human Resources since Mrs. Thomas was on maternity leave. For two weeks, Mr. Abbes tried to contact the new director, Mr. Montgomery so he could explain his situation. Mr. Montgomery disappeared and Mr. Abbes

could not meet with him. According to the office of equal opportunity report, the ultimate decision maker regarding Mr. abbes discharge was British. Note that Mr Montgomery was a new director who failed to investigate Mr. Abbes's situation and took for granted Brazilians feedbacks and supported their decision. There is someone else who was discriminated and terminated at the same time. Mr. Aamer Hijazie, Arab origin, was a good stress engineer who performed excellent work and added value to the team.

I, Lazhar Abbes want to bring this company to justice for the damage caused to me from harassment, discrimination, loss of income and opportunities. Note that the management of Embraer Service Inc. never promoted a non-Brazilian employee to a leadership position with the exception of hiring a new director, Mr. Montgomery. Also, Embraer Service Inc. never terminated a Brazilian employee even though many lack knowledge and experience. I feel that the initial investigation focused only on management feedback.

It is vital to pursue an investigation to include all members of the engineering office. Only then, we will get the truth on what has taken place at Embraer Service Inc. Note that Embraer Service Inc has violated the federal labor law by forcing its employees to work 42.5 hours per week, Embraer Services Inc was paying the overtime at a rate of 1.25 instead of the correct rate of 1.5 (time and half). Therefore, Embrare Services Inc owes 2.5 hours in overtime per week to its employees, including a rate of 0.25 for all worked overtime.

2	3	4	5	6	PN	CODE	(Scanned from copy.) Design List 145XR-WING TO FUSELAGE FAIRING.		Z- Quic		Qu
	3				145-51332-401	228550 C	WALLSEGREG.ASSY, HYDR	LAZHAR	N/A	15.Jan	1
		4			145-51333.401	228551 8	WALL, REAR COMPT FAIRING -CMPST	LAZHAR		15.Jan	1
		4			145-52225-001	243841 2	SEALANT PROFILE-REAR WFF-RUBBER	LAZHAR	N/A	8-Jan	1
					145-51099.801	23447 34	WALL SEGREG INSTI, HYDR -REAR WFF	LAZHAR	N/A	29.Jan	1
2					145-51535.401	229975 9	WALL AIB3 ASSY - WFF	LAZHAR	NIA	22.Jan	1
	3				145-51307-401	2295575	WALL RIB3 . WFF- CMPST	LAZHAR	17-Dec	15.Jan	1
	3				145.51070-001	2438428	SEALANT PROFILE-REAR WFF.RUBBER	LAZHAR	N/A	8-Jan	1
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	3				. 145-51070-001	2438428	SEALANT PROFILE.REAR WFF.AUBBI:R	LAZHAR	N/A	8.Jan	1
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	3				145-51090.401	243694 5	WALL HYDR COMPT -IONG- LH .FAIRING -CMPST	LAZHAR	19.Dec	15-Jan	1
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	3				145-52277-401		WALL, HYDR COMPT -IONG- RH .FAIRING -GMPST	LAZHAR	19-Dec	15-Jan	1
	3				145-52213-001	2438434	SEAIANT PROFILE-REAR WFF-RUBBER	IAZHAR	N/A	8.Jan	1
2					145.52214-401	2438606	WALL ASSY RIB 6- WFF .	IAZHAR	N/A	22.Jan	1
	3				145-52215-401	2438612	WAII, RIB 6. WFF-CMPST	LAZHAR	17.Dec	15.Jan	1
	3				145-52216-001	2438440	SEALANT PROFILE-REAR WFF-RUBBER	LAZHAR	N/A	8-Jan	1
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2					145-52245-401	245696 5	WALI SEGREG. ASSY VENT BOX-REAR WFF	IAZHAR	N/A	22.Jan	1
	3				145-52246-401	2438951	WALI SEGREG. VENT BOX-REAR WFF-CMPST	IAZHAR	17-Dec	15.Jan	1
	3				145-52247-001	2438434	SEALANT PROFILE-REAR WFF-RUBBER	LAZHAR	N/A	8.Jan	1
2					145.5224 5-402	245696 5	WAII SEGREG. ASSY VENT BOX-REAR WFF	LAZHAR	N/A	22.Jan	1
	3				145-52246-402	243895 1	WALL SEGREG. VENT BOX-REAR WFF.CMPST	LAZHAR	17-Dec	15.Jan	1
	3				145.52247-002	2438434	SEALANT PROFILE-REAR WFF-RUBBER	LAZHAR	N/A	8.Jan	1

Product list developed by Lazhar Abbes
Ref Catia Model file: D03—Released_145XR

List of Models:

145-4600-001-0-RIB 01-3D FROM LABBES TO EMBRAER
145-51008-001#00#01#FITTING_01_TANK_AL# CAT_2D#LABBES
145-51008-001#00#01#FITTING_01_TANK_AL# CAT_3D#LABBES
145-51008-001#00#01#FITTING_01_TANK_AL# LITE#LABBES
145-51008-002#00#01#FITTING_01_TANK_AL# CAT_2D#LABBES
145-51008-002#00#01#FITTING_01_TANK_AL# CAT_3D#LABBES
145-51008-002#00#01#FITTING_01_TANK_AL# LITE#LABBES
145-51010-001#00#01#FITTING_02_TANK_AL# CAT_2D#LABBES
145-51010-001#00#01#FITTING_02_TANK_AL# CAT_3D#LABBES
145-51010-001#00#01#FITTING_02_TANK_AL# LITE#LABBES
145-51010-002#00#01#FITTING_02_TANK_AL# CAT_3D#LABBES
145-51010-002#00#01#FITTING_02_TANK_AL# CAT_2D#LABBES
145-51010-002#00#01#FITTING_02_TANK_AL# LITE#LABBES
145-51011-401#00#01#FITTING_ASSY_03_TANK# CAT_3D
145-51011-401#00#01#FITTING_ASSY_03_TANK# LITE#LABBES
145-51012-01#00#01#FITTING_ASSY_03_TANK_AL# CAT_2D#
145-51011-01#00#01#FITTING_ASSY_03_TANK_AL# CAT_3D#
145-51011-01#00#01#FITTING_ASSY_03_TANK_AL# LITE#
145-51034-001#00#01#BRACKET_FUEL_SYSTEM_VENT#2D
145-51034-001#00#01#BRACKET_FUEL_SYSTEM_VENT#3D
145-51034-001#00#01#BRACKET_FUEL_SYSTEM_VENT#LITE
145-51035-001#00#01#BRACKET_FUEL_SYSTEM_VENT# 2D
145-51035-001#00#01#BRACKET_FUEL_SYSTEM_VENT# 3D
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145-51036-001#00#01#BRACKET_FUEL_SYST_PRESS_SWIT# 2D
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145-51036-01#00#01#BRACKET_FUEL_SYST_PRESS_SWIT# LIT
145-51037-001#00#01#BRKET_FUEL_SYST_PRESS_REFUEL_2D
145-51037-001#00#01#BRKET_FUEL_SYST_PRSR_REFUEL 3D

145-51037-001#00#01#BRKET_FUEL_SYST_PRESS_REFUEL
145-51038-001#00#01#BKT_FUEL_SYS_PRES_SLAND_SPRT# 2D
145-51038-001#00#01#BKT_FUEL_SYS_PRES_SLAND_SPRT# 3D
145-51038-001#00#01#BKT_FUEL_SYS_PRES_SLAND_SPRT# LT
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145-51040-001#00#01#BRACKET_FUEL_SYST _LITE#LABBES
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145-51041-001#00#01#BRACKET_FUEL_PUMP_SUPPORT# 3D#
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145-51042-001#00#01#BCKT_FUEL_SYST_LOW_LEVEL# 3D
145-51042-001#00#01#BRKT_FUEL_SYST_LOW_LEVEL# LITE
145-51043-001#00#01#BRKT_FUEL_SYST_RIB2#PBI#2D
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145-51043-001#00#01#BRACKET_FUEL_SYST_RIB2# LITE
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145-51044-001#00#01#BRACKET_FUEL_SYST_PILOT# 3D
145-51044-001#00#01#BRACKET_FUEL_SYST_PILOT# LITE
145-51048-001#00#01#BCKET_FUEL_SEGREG_FWD# 3D
145-51068-401#00#01#FAIRING_SKI_WFF-COMPST#3D
145-51068-001#00#01#SEALANT_PROFILE_REAR- 2D
145-51070-001#00#01#SEALANT_PROFILE_REAR- 2D
ANGLE CONNECTING RH PANEL TO SEGR.WALL FWD RIB#1
FITTINGS-SECTIONS-2D
MACHINED_STRG_PROPOSAL_LABBES
PRELIMINARY LWR. LATERAL TANK ATTACHMNET
PRELIMINARY SEGREGATION PANEL SUPPORT BRACKETS
PRELIMINARY TANK-FAIRING ATTACMENT MACHINED
PRELIMINARY TANK-FAIRING ATTACH_FOR _SHEET MTL .
SUP_FLAP_CONTROL_UNIT_REPOSITIONNED_LABBES

SYSTEMS BRACKETS LABBES
WALL_SEGR

NOTE: Many other completed work and production list not included and can be found in defendant's Catia files.

RESUME'

LAZHAR ABBES
6737 HOULTON CIR.
LAKE WORTH, FL. 33467
TELEPHONE: (561) 304-3006

Structural Design Engineer
Technical Expertise:
Researched and developed structural designs for hundreds of metallic and composite components with diverse requirements. Produced layout, detail, assembly, installation and modification drawings and associated documentation. Optimized design considerations weight, cost, materials and processes, assembly, installation and in-service requirements. Provided support to manufacturing and tooling fabrication methods.
Conducted design studies and generated detailed statements of work and change proposals. Verified quality and accuracy of engineering packages. Coordinated and supported customer groups to obtain drawings concurrence.
Conducted systems and interiors/structures interfaces, specifications and design. Coordinated interfaces for wiring, environmental control systems, electrical equipment, air conditioning and flight controls. Identified design issues and recommended solutions to technical leads and managers.

CATIA V5: 10,000+ hours

CATIA V4: 18,000+ hours
UGII V9: 12,000+ hours

Teamwork & Leadership
Led successful teams of structural engineers and drafters. Delivered complex engineering projects successfully on time. Assigned and tracked work packages and responsibilities, and chaired team design reviews. Supported team engineers for technical solutions and proposals for design improvements. Communication: Solid interpersonal abilities demonstrated in collaborative efforts with engineers, drafters and support groups. Effectively coordinated and negotiated with internal customers and documented results. Possess excellent written and oral communication skills.
11/02 TO PRESENT: Catia V5.
Engineering research and development. Car body styling and concept design including surfaces definition, parts and assemblies. Design and development of new commercial and residential products.
5/01 TO 11/02 Embraer Service Inc. Palm Beach Gardens, FL.
Product development engineer structures, Catia. Design and detailing of various component parts of ERJ-145-XR program, including fuel tank and composite fairing parts. Structures group leader for the fuel tank project with 100% successful completion. Also involved in the design and detail drawings for the interior interfaces of the legacy program.
3/98 TO 4/01 Design Engineer, Cadkey.
Development of new lighting fixtures, design and detail drawings of parts. Prepared tooling and manufacturing recommendations.
10/97 TO 3/98 Sumitomo Canada/Menasco Aerospace Toronto, ON.
Design engineer consultant, Catia.
Design and detail drawings of the main landing gear cylinder.
3/96 TO 8/97 The Boeing company, Seattle, WA.
Design engineer consultant, Catia. Model design, produced details, assemblies and installation drawings for the 747-500. Design structures of the 757-300 wing box, including layouts, details and installation

drawings, skins resizing, ribs, chords, spars, and stringers. Coordinated manufacturing solutions with vendor divisions. Supported group for design and installation drawings coordination.

7/95 TO 3/96 Pratt & Whitney Canada Ltd. Mississauga, ONT.
Designer Consultant, Catia. Design and drafting of various components of (P-500) engine.

5/94 TO 7/95 Dehavilland Aircraft, Downsview, ONT.
Design engineer consultant, Cadam and Catia. Various assignments including Payloads design of the dash 8 programs.

3/91 TO 5/94 Wardrop Engineering Inc., Manchester Plastics Inc.
Design Engineer Consultant, UGII. Design structures of (G.S.E.) Ground Support Equipment for the space station. Design and drawing of various automotive components for companies General Motor, Ford and Chrysler.

1/90 TO 4/91 McDonnell Douglas Canada Ltd. Rexdale, ONT.
Design Engineer structures consultant, UGII. Design, layout and detailing of MD-80 and MD-11 Wing, structures including: skins, stringers, ribs, spares, fairings and bulkhead installations. Engineering follow-up and investigations of problems encountered by manufacturing.

1/88 TO 12/89 The Boeing Company, Seattle, WA.
Design engineer structures consultant, Design structures of various frame detail, assembly and installation, section 46 fuselage and bulk cargo of the 747-400 SR/I.R, passenger, combi and freighter airplanes.

8/85 TO 6/89 McDonnell Douglas Canada Ltd. Rexdale, ONT.
Design engineer structures, UGII. Design structures of the wings, vertical stabilizer, pylon, fairings and empennage of DC-9, DC-10, MD-11 and bulkhead of F-18 aircraft.

1/85 TO 8/85 Canadian Aviation Electronics, St-Laurent, QBC.
Design engineer, Intergraph. Consoles and panels design and development. Systems packaging design. Completed details, assemblies and installations drawings.

12/82 TO 12/84 Mechanical design engineer,
Design, layout and drafting of components for automotive and

injection molding products.
2/81 TO 12/82 Dehavilland Aircraft, Downsview, ONT.
Loft design engineer consultant, Involved in the structures design and details of the forward, center and rear fuselage, including furnishing loft design of the Dash 8 aircraft.
6/76 TO 2/81 Canadair Ltd. St- Laurent, QBC.
Loft design engineer, Lofting, design and detailing of the fuselage structures, including air conditioning system installation of the Challenger aircraft CL-600 and 601 programs.

EDUCATION:

8/95 FECK and BORCHARD Consulting Inc. CATIA V4 Courses, basic and advanced modules.
10/84 TO 1/85 SENECA COLLEGE OF APPLIED ARTS AND TECHNOLOGY 9/83 TO 12/83 WILLOWDALE, ONT. CAD/CAM courses, including 2D and 3D wire frame and drawing generations of various engineering applications.
9/75 TO 6/76 POLY-TECHNICAL SCHOOL, UNIVERSITY OF MONTREAL. MONTREAL, QUEBEC.
Mechanical engineering design courses.
9/69 TO 7/71 TUNISO-SWISS SCHOOL, GABES, TUNISIA. Mechanical Award Diploma
10/66 TO 6/69 PROFESSIONAL COLLEGE OF METLAOUI, TUNISIA. Mechanical college graduate.

Note: Comparative education report confirms equivalence to a Bachelor of Science in Mechanical Engineering, offered by an accredited College or University in the United States.

KNOWLEDGE, COMPETENCIES & SKILLS EVALUATION
PROFESSIONAL / TECHNICAL FUNCTIONS CATEGORY

NAME: LAZHAR ABBES

HIRE DATE:

DEPARTMENT CODE:

CURRENT FUNCTION: Product Dev. Engineer

CURRENT LEVEL:

PROPOSED FUNCTION: Same

PROPOSED LEVEL: MOD II STEP 9

FACTORS / INDICATORS	EVALUATION Max. %	Rated %	Weight	Score	ITEMS TO BE ADDRESSED IN PERFORMANCE OBJECTIVES
ACTIVITIES (effective execution)	100	80	1.25	100	- Improve productivity - Improve interpersonal relationship (communication)
KNOWLEDGE (knowledge / technology mastery)	100	85	1.00	85	- Enhance's methods and processes - Certification Requirements
SPECIFIC COMPETENCIES (demonstrated)	100	85	1.50	127.5	
SKILLS AND BEHAVIOR (demonstrated) Incl. Personal Commitment	100	75	1.25	93.75	- Listening, interpreting, responding.
			Total	406.25	

COMMENTS

EMPLOYEE	EVALUATOR
STRENGTHS: NEED TO IMPROVE COMMUNICATION SKILLS, CONSISTENCY, SHARED INFORMATION WITH OTHERS ALL EMPLOYEES AND LISTEN TO POSITIVE APPROACHES FROM OTHERS / Leaders / Peers MANAGERS	
Signature:	Signature:
Date: 06/18/02	Date: 18 JUN 02

CERTIFICATION / APPROVAL

Immediate Supervisor	Department Head	VP. H.R./Administration
/ /	18 JUN 02	/ /

Supreme Court, U.S.
FILED
061138 DEC 11 2006
OFFICE OF THE CLERK

NO ----------

In The

Supreme Court of the United States

Lazhar Abbes

Pro se **Petitioner,**

VS.

EMBRAER ENGINEERING SERVICES, INC.

D/b/a EMBRAER SERVICES INC.

Respondent.

Appendix D

Lazhar Abbes

6737 Houlton Cir.

Lake Worth, FL. 33467

Tel: (561) 304-3006

Tel: (561) 304-3006

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No. 04-80652-Civ-RyskampNitunac

Filed by /S/ D.C.
OCT -20C5 Clerk U.S. DIST.
S.D. of FLA, W.P.B.

LAZHAR ABBES,

Plaintiff,

vs.

EMBRAER SERV CES INC.

d/b/a EMBRAER ERVICE INC.,

Defendant.

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on Order of Reference (DE 3) from United States District

Judge Kenneth L. Ryskamp "for all pre-trial matters, to take all necessary and proper action as required by law, an or to submit a Report and Recommendation to this Court." Pending before the Court is the Defendant's Motion for Summary Judgment (DE 21) filed on July 29,2005. Plaintiff

filed his Response to the Motion for Summary Judgment (DE 26) on September 14, 2005.

Defendant files its reply (DE 28) on September 19, 2005. This matter is now ripe for review.

On July 14, 2004, Plaintiff filed a one count complaint alleging that Defendant, his former employer, terminated his employment because of his national origin.

Defendant's Motion for Summary Judgment

The Defendant argues that its Motion for Summary Judgment (DE 21) should be granted because Plaintiff fails to set forth a prima facie case of discrimination based upon his national origin. Further, Plaintiff cannot rebut Defendant's legitimate reasons for terminating his employment. In the alternative, Defendant argues that it is entitled to partial summary judgment to bar back pay damages because plaintiff failed to exercise reasonable diligence in seeking future employment.

Plaintiffs Response

Plaintiff responds that Defendant terminated his employment based on his Tunisian/Arabic national origin. Plaintiff maintains that other employees of Brazilian origin were demoted rather than terminated.

Plaintiff denies the allegation that he performed his work poorly.

Discussion

A. Legal Standard

On a motion for summary judgment, the court is to construe the evidence and factual inferences arising there from in the light most favorable to the nonmoving party. See Adickes v. S .H. Kress & Co., 398 U.S. 144, 157,90 S. Ct. 1598 (1970).

Summary judgment can be entered on a claim only if it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). 1 As the Supreme Court has explained the summary judgment standard:

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and n which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since the complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.

Celotex Co .v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548 (1986).

1Federal Rule of Civil Procedure 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with he affidavits, if any, show that there is no genuine issue of material fact and that the moving pa y is en..tled to judgment as a matter of law."

The party seeking summary judgment has the initial burden of informing the court of the basis for the motion and of establishing, based on relevant "portions of 'the pleadings, depositions, answers to interrogatories, and admissions in the file, together with affidavits, if any,' " that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Celotex. 477 U.S. t 323,106 S. Ct. 2548. Once this initial demonstration under Rule 56(c) is made, the burden of production, not persuasion, shifts to the

nonmoving party. The nonmoving party must "go beyond the pleadings and by [his or her] own affidavits, or by the 'depositions, answers to interrogatories, an admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex ,477 U.S. at 324,106 S. Ct. 2548; See also Fed.R.Civ.P. 56(e). In meeting this burden the nonmoving party "must do more than simply show that there is a metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp. 475 U.S. 574, 586, 106 S. Ct. 1348 (198). That party must demonstrate that there is a "genuine issue for trial."

Fed.R.Civ.P. 56(c.

The trial court's function at this juncture is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby. Inc. 477 U.S. 242, 249-50, 106 S. Ct. 2505 (1986) (citations omitted). A dispute about a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson, 77 U.S. at 248, 106 S. Ct. 2505; see also Barfield.v. Brierton. 883 F.2d 923,933 (11th Cir. 1989).

B. National Origin Discrimination

Plaintiff brings this cause of action pursuant to Title VII of the Civil Rights Act of 1964.

Title VII makes it "an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment...opportunities or otherwise adversely affect his status as an employee, because of such individual's...national origin." 42 U.S.c. § 2000e-2(a)(1)-(2). In an action brought

under Title VII, the complainant "must carry the initial burden of establishing a prima-facie case. ..." McDonnell Douglas Com. v. Green, 411 U.S.792,802 (1973).

In order to establish a prima facie case of discrimination, Plaintiff must show that:

(1) the employee is a member of a protected class. ... (2) an adverse employment action occurred; (3) that the employee was treated differently than similarly situated employees who were not embers of the protected class; and (4) that sufficient evidence exists to infer a nexus or causal connection between sex [or national origin] and the disparate treatment alleged.

Weaver v. Tech.Corp.,66 F. Supp. 2d 1258, 1269 (M.D. Fla. 1999) (citations omitted). Once the plaintiff prove this prima facie case, "the burden then shifts 'to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection.'" Texas Dep't. of Community)Affairs, 450 U.S. t 253, 101 S. Ct. at 1093 (citations omitted). If the Defendant articulates a nondiscriminatory reason, Plaintiff then must prove by a preponderance of the evidence that the reasons offered by he Defendant were a mere pretext instead its true motive. Id Thus, to maintain a cause of action in this case, Plaintiff must first present evidence that the Defendant intentionally discriminated against him on the basis of his national origin.

I. Prima Facie Case

Defendant concedes that Plaintiff is a member of a protected class who was terminated. (Def.'s Mem. at 4.) Thus, Plaintiff meets the first two prongs in establishing a prima facie case. However, Plaintif does not establish that he was treated differently from other employees who were not members of the protected class, or that sufficient evidence exists to infer a nexus or causal connection between Plaintiff's national origin

and his termination. Plaintiff points to no individual outside his protected class who was similarly situated to him and who was not placed on probation or terminated. Plaintiff argues that "Defendant's managers Mr. Hayama and Mr. Correa were demoted and not terminated [confirming) that [Defendant) made exceptions for employees of Brazilian origin." 2 (Pl.'s Res. at 1.) However, Plaintiff fails to establish that these employees were otherwise similarly situated with him. Plaintiff does not state why these employees were demoted, whether they were placed on probation, or whether they successfully completed their probationary period.

Instead, Plaintiff relies upon a series of conclusory allegations about his treatment while employed. For instance, Plaintiff makes a vague statement that he was transferred to the Structures Group against his will because Mr. Correa did not like him, and that the transfer was unfair. (Pl. 's Res. at 2.) However, the decision to transfer Plaintiff and Plaintiffs repeated disagreements with his managers do not create a cause of action under Title VII. See Walker v. Nationsbank of Fla. N.A., 53 F .3d 1548 1558 (11th Cir. 1995) ("Serious personality clashes may be an unwelcome reality of the workplace, and may lead, as in this case, to unfortunate consequences for employees such as Walker. Nevertheless, such clashes do not, without more, form the basis for relief under Title VII

..." Plaintiff fails to set forth any material facts in dispute establishing Defendant's discriminatory

---

2 Plaintiff so alludes to an employee named "Mr. Egor" who apparently received a green card, while Plaintiff did not. (pl.' s Res. at 1). Aside from this conclusory allegation, Plaintiff never establishes t at this employee was not a member of the protected

class, was similarly situated to Plaintiff, and received disparate treatment because he was not a member of the protected class.

intent.3 Thus, Plaintiff fails to establish a prima facie case of discrimination.

II. Legitimate Non-Discriminatory Reason

Assuming arguendo that Plaintiff had established a prima facie case of discrimination, the Defendant sets forth several non-discriminatory reasons for the employment action which Plaintiff is unable to rebut. Defendant argues that some of Plaintiff's designs were flawed and unacceptable. (Statement of Material Facts Not in Dispute ("Statement") at ~ 10.) Defendant maintains that Plaintiff "was resistant to confining his designs to the unique procedures and policies [Defendant] had to follow in creating designs for its customer and parent company..." (Statement at ~ 5.) On November 1, 2002, Defendant placed Plaintiff on probation and informed him that he needed to improve productivity, and accept constructive criticism. (Statement at ~ 25.) Even after being placed on probation, Plaintiff continued to argue with his supervisors and refused to conform his drawings to certain specifications. Plaintiff was then fired. (Statement at ~~ 28-29.)

It is clear that Plaintiff believes that his work for Defendant was excellent and of superior quality. (Pl.'s Res. t 2.) However, Plaintiff's insistence that his performance was excellent does not create a dispute of material fact about whether he failed to meet Defendant's expectations.4 In fact,

3 Plaintiff includes several grievances and/or complaints in his Response including his belief that Defendant did not promote non-Brazilians, Defendant's opinion of his work as being poor was incorrect and Plaintiff was forced to work in a cold environment. None of these

Allegations, taken in the light most favorable to Plaintiff, establish any genuine issue for trial.

Plaintiff simply fails to meet his burden.

4 Plaintiff attaches the Declaration of co-worker, Gary Baklund. Baklund's praise of Plaintiff's work does not create a dispute as to whether Defendant's predominance evaluation of Plaintiff, Defendant's decision to place Plaintiff on probation, and Defendant's ultimate decision to fire Plaintiff were motivated by discriminatory intent. Baklund alleges that Mr. Kataoka made an allegedly racist comment to Mr. Hadjese concerning Plaintiff, yet there is no evidence that Mr. Kataoka played any role in Defendant's employment decisions. See Mousa v. Lauda Air Luftfahrt, A.G.. 2 8 F. Supp. 2d 1329, 1342 (S.D. Fla. 2003) ("Because the Court finds that the

When an employer produces negative performance reviews, an employee's assertion of his own good performance is insufficient to defeat summary judgment. Holifeld v. Reno, 115 F.3d 1555, 1565(11th Cir. 1997).

Plaintiff fails to present any legal authority for his position. Instead, Plaintiff relies upon a series of conclusory allegations in setting forth his Response. Plaintiffs Response identifies no material facts in dispute and no genuine issue for trial.

RECOMMENDATIN

Based on the foregoing, it is hereby

RECOMENDED to the District Court that Defendant's Motion for Summary Judgment (DE 21) be GRANTED.

Any party may serve and file written objections to this Report and Recommendation with the Honorable Kenneth L. Ryskamp, within ten (10) days after being served with a copy. See 28 U. .C. § 636(b)(1)(C). Failure to file timely objections may limit the scope of appellate review of factual findings contained herein. See United States v. W:rren, 687 F.2d 347,348 (11th Cir.1982) cert. denied, 460 U.S. 1087 (1983).

DONE and RECOMMENDED in Chambers at West Palm Beach in the Southern District of Florid, this 4 day of October 2005

\S\ ANNE VITUNAC

Chief United States Magistrate Judge

Statement at issue, even if credited as direct evidence of discriminatory intent, was not made or known by a person with control over the relevant employment decisions, Plaintiff has failed to make out a prima facie case. ..."

Copies to:

Honorable Kenneth L. Ryskamp

Lazhar Abbes, pro se

Counsel of Record

OBJECTION TO REPORT AND RECOMMENDATION

I, Plaintiff Lazhar Abbes, object to the recommendation by Judge Ann E.Vitunac that the defendant's Motion for Summary

Judgment (D21) be granted. This letter was submitted to the Honorable Kenneth L. Ryskamp for review.

The Defendant's Motion for Summary Judgment stating that Plaintiff fails to set forth a prima facie case is not true since Mr. Abbes can prove the following:

Mr. Abbes is member of a protected group Defendant terminated Plaintiff, Mr. Abbes without a valid reason.

Defendant made exceptions for employees of Brazilian origin. See Plaintiff's response to summary Judgment Page, **App – C** – Page 11. Mr. Abbes does not know what reasons and facts led to Mr. Correa and Mr. Hyama's demotions since Mr. Abbes was terminated prior to the Defendant's action.

Mr. Baklund's written declaration proves there was discrimination against employees of Arabs origin. There is another witness, Mr. Zouhir Bouter who was on the list and has not yet submitted his declaration. Mr. Abbes has no attorney to represent him and does not know when he should bring his witnesses. Mr. Zouhir can be reached by telephone at: (561) 685-7454.

Plaintiff Mr. Abbes was treated poorly in the terms and conditions of his employment due to his national origin. Mr. Abbes was assigned to a deficient Catia workstation in a very harsh environment with excess air conditioning. Defendant failed to correct or respond to Mr. Abbes's requests. Defendant engaged in discriminatory practice(s) with malice or reckless indifference and/or with wantonness, actual malice, deliberation, gross negligence, or utter disregard of law.

Defendant's managers harassed Mr. Abbes. Mr. Hyama unfairly rated Mr. Abbes's performance review. Defendant breached Mr. Abbes's contract agreement by failing to obtain a green card for

him and his wife during his employment. See exhibit 2 in Plaintiff's response to Summary Judgment.

Mr. Abbes did not fail to present proof of discriminatory actions against him as described in Plaintiff's Response to Summary Judgment.

Defendant could not provide a valid reason for terminating the Plaintiff's employment. The Defendant's argument that the Plaintiff failed to exercise reasonable diligence in seeking future employment is wrong. There were no possibility for employment in the Plaintiff's field of Aerospace engineering and design for a long time. Mr. Abbes conducted many researches to find employment. Note that Mr. Abbes is a Canadian citizen and cannot work without a TN visa (Trade Nafta). This requirement makes it more difficult for Mr. Abbes to obtain employment in the United States.

Following is a correction to Page 5 of Report and Recommendation stating that: "...Instead, Plaintiff relies upon a series of conclusory allegations about his treatment while employed. For instance, Plaintiff makes a vague statement that he was transferred to the structures group against his will...." The correct statement is: Mr. Abbes was transferred to the Interior group, which is another specialty of aerospace engineering and Mr. Abbes had no interest nor experience to work in this field. He was forced to transfer against his will.

Mr. Abbes's statement that Mr. Egor and other members of the structures group received their green cards is true and can be verified. Mr. Abbes did not obtain his green card. This statement is accurate and not a conclusory allegation as stated in Defendant's argument.

Defendant's allegations of Plaintiff's poor performance, arguing with his supervisors and refusing to conform his drawings to

certain specifications are unfounded and false. All designs and drawings done by Mr. Abbes were to the Defendant's standards. No engineering work can be released without being checked for compliance.

Conclusion

I, Plaintiff Lazhar Abbes, respectfully plead that Honorable Kenneth L. Ryskamp reviews all aspects of this cause and brings the trial case to the Court.

\S\ Lazhar Abbes

Dated October 09, 2005

Respectfully mailed copies to:

Honorable Kenneth L. Ryskamp